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QUÉBEC'S TRADITIONAL CONSTITUTIONAL POSITIONS 1936 - 1990

WORKING PAPER

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QUÉBEC'S TRADITIONAL CONSTITUTIONAL POSITIONS FROM 1936 TO JUNE 1990

Methodology used in the document

This document describes and lists the positions taken and the demands made by successive Québec governments concerning Québec's status and constitutional powers. It has two objectives: to update the earlier study by the ministère des Affaires intergouvernementales du Québec in 1978, Les positions traditionnelles du Québec sur le partage des pouvoirs (1900 - 1976), and to expand the scope of that study by including other themes such as Québec's status within the federation. It covers a period of 54 years, i.e. from August 26, 1936 when the first government of Maurice Duplessis was sworn in, until June 23, 1990, the deadline for ratification of the Meech Lake Accord. It draws on such diverse sources as supporting documents, briefs for intergovernmental conferences, press releases, white papers, and legislative speeches which became part of the public life of Québec governments and expressed their positions.

It makes no claim to be exhaustive; such is not its objective. The intention of this paper is to add a historical perspective to a meticulous recension of government positions. The source of each such position is identified and dated, so that the reader will be in a better position to form an opinion not only of their nature, but also of their scope, consistency and the issues at stake.

The document presents, in chronological order, the positions and demands of successive Québec governments. Since the subject is vast and the themes varied, some form of classification was required. The one chosen organizes the material under six headings.

The first, "Québec's status within Canada", contains the government statements dealing with the place Québec should hold within the Canadian constitutional structure. It also describes the fundamental interpretations Québec governments have given to the Constitution Act, 1867, and to the process by which Québec's political status is determined.

The second heading concerns the amending formula and includes the positions governments have taken in regard to the patriation of the Constitution.

The third deals with the positions taken by Québec governments regarding the distribution of powers. It is divided into three sections: general principles, sectorial jurisdiction, and unilateral jurisdiction. The first section includes the principles, criteria and objectives governments have invoked to justify decentralization and describes some proposed constitutional agreements. It also includes statements describing how governments have viewed the interplay of constitutional powers. The second section covers the positions governments have taken either to affirm and define their

jurisdiction over a particular sector of activity, or to claim new ones. Unilateral powers encompass the spending, reserve, disallowance, declaratory, residual and emergency powers.

The fourth heading, "individual and language rights", deals with the entrenchment in the Constitution of individual rights and language rights. It also includes the basic principles of Québec's language policy.

The fifth looks at federal institutions, i.e. the Supreme Court, the Senate, federal Crown corporations and Federal-Provincial Conferences.

The final heading, "intergovernmental policy", is broader, encompassing co-financed agreements and fiscal arrangements, the conduct and mechanism of intergovernmental relations, and positions of principle on certain major issues (Free Trade Agreement, Aboriginal Peoples, etc.).

The sovereignty-association proposal, because of its exceptional nature in Québec's political history, required a special classification. Its description is divided into four parts: Québec's relation with Canada, the definition of sovereignty, spheres of action shared with Canada, and institutions common to Québec and Canada.

First Government of Maurice Duplessis (August 26, 1936 - October 25, 1939)

Amending formula

1. The federal pact, by participating in the nature of conventions, can neither be amended nor modified without the agreement of all the parties, i.e. of all the provinces.[1]

Distribution of powers

General principles

2. The provinces, to give birth to the federation, agreed to transfer to the federal entity a portion of their powers, but retained, apart from the legislative powers not ceded, their political entity and special constitution. They therefore remained, in their own sphere, sovereign states. The powers and attributes of the provinces do not flow from the central government; on the contrary, the central government was born of the common will of the provinces.[2]

3. The centralization that some circles averse to provincial rights seem to want is a national and social evil (...). The country's prosperity does not depend on greater centralization of legislative powers. On the contrary, the closer the legislature's contact with the communities for which it legislates, the greater the likelihood that the legislation will be truly productive.[3]

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1 **Brief submitted by the Québec government, public hearings of the Royal Commission on Dominion-Provincial Relations, May 12, 1938, p. 4 (quotation). When a paragraph reproduces a statement in full, it is indicated by the expression "quotation". (Translator's note: texts indicated by "quotation" are, of course, translated) Otherwise, the position expressed by the government is paraphrased as faithfully as possible.**

2 **Ibid., p. 4 (quotation).**

3 **Ibid., p. 5 (quotation).**

Intergovernmental policy

4. The province of Québec is ready to cooperate closely in establishing an equitable and effective unemployment insurance system that is national in scope, but does not encroach on provincial rights and autonomy.[4]

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[4] **Letter from Maurice Duplessis to W.L. Mackenzie King, Prime Minister of Canada, December 30, 1937 (quotation).**

Government of Adélard Godbout (November 8, 1939 - August 8, 1944)

Distribution of powers

a) General principles

5. It is essential to Canadian unity and to Canada's progress that provincial rights be rigorously respected. Any encroachment on these rights would necessarily weaken Confederation.[5]

6. If Canada is to become a powerful nation, it will be because of the strength and well-being of each province of the Dominion. We will never succeed in building a great nation if our provinces do not have sufficient freedom of action and responsibilities, elements of progress that are so necessary in public affairs.[6]

7. Québec considers that after the war, it will be necessary and even imperative not only to deprive the federal government of the exceptional powers it has held since 1939, to restore to the provinces the prerogatives many of them have yielded, but also to revise the text and spirit of the British North America Act, to specify the powers of the provincial governments in certain matters and increase their powers in certain others.[7]

b) Unilateral powers

8. If there exists in any part of the country a situation that could compromise the effectiveness of Canada's war effort, no province of the Dominion nor any group of its population would deny the federal government the right and duty to take the measures necessary to remedy it. But exceptional measures should be used to deal with an exceptional situation.[8]

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5 Declaration by Adélard Godbout, Dominion-Provincial Conference, January 15, 1941, p. 85 (quotation), Queen's Printer, 1941.

6 Declaration by Adélard Godbout, Dominion-Provincial Conference, January 14, 1941, p. 18 (quotation), Queen's Printer, 1941.

7 Declaration by Adélard Godbout in 1944, taken from Claude Morin, Le combat québécois, Les éditions du boréal express, 1973, p. 68 (quotation).

8 Opening statement by Adélard Godbout, Dominion-provincial Conference, January 14, 1941, p. 18 (quotation), Queen's Printer, 1941.

Second Government of Maurice Duplessis (August 30, 1944 - September 7, 1959)

Québec's status within Canada

9. In 1867, four pioneer provinces decided to form a confederation. It is important to remember this, because it proves conclusively that Confederation was born of the free consent of the four founding provinces. Confederation, let us never forget, is the child of the provinces.[9]

10. Canadian Confederation is a pact of union between two great races.[10]

11. The province of Québec is firmly convinced that the federal system is the only system that can maintain the unity of the country. This system both protects minorities and guarantees the economic interests of each region of the country.[11]

Amending formula

12. While the constitution gives the provinces, to a limited degree, the right to amend the constitution as far as provincial jurisdiction is concerned, it denies the federal government that right.[12]

13. Confederation is essentially a pact. And since the nature of the constitution is that of a pact, it cannot nor should it be

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9 Declaration by Maurice Duplessis, Federal-Provincial Conference, April 29, 1946, p. 455 (quotation), Queen's Printer, 1946.

10 Opening speech by Maurice Duplessis. Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, pp. 17-18, Queen's Printer, 1950. Duplessis reiterated this statement at the Federal-Provincial Conferences of September and December 1950, and the Federal-Provincial Conference of November 1957.

11 Declaration by Maurice Duplessis, Federal-Provincial Conference, April 29, 1946, p. 399 (quotation), Queen's Printer, 1946.

12 Intervention by Maurice Duplessis, Federal-Provincial Constitutional Conference, Ottawa, January 10-12, 1950, p. 83, Queen's Printer, 1950. See also Report of the Royal Commission of Inquiry on Constitutional Problems, Province of Québec, volume 1, 1956, p. 164.

amended without the consent of all the contracting parties, or at least without the consent of the four pioneer provinces.[13]

Distribution of powers

a) General principles

14. Provincial autonomy cannot be safeguarded by substituting federal grants for provincial financial independence.[14]

15. In the social legislation field, the federal system probably offers advantages not found in countries with a single government. The co-existence of several governments autonomous in their respective spheres provides points of comparison; by its very nature, this creates a beneficial emulation that has positive effects for the governed.[15]

16. Canada is a confederation of autonomous provinces. A genuine federal system is based on a federal authority and provincial authorities that enjoy not only the power to legislate and administer, but the financial powers that enable them to govern.[16]

17. One of the essential prerogatives of autonomous provinces is the ability to collect, by direct taxation and as they consider appropriate, the funds needed for the efficient operation of public services and the implementation of laws passed by their Parliament (...). Fundamentally, the federal system allocates public tasks, implying a correlative distribution of public revenues (...). A central government that appropriated the sources of taxation for itself would, in fact, reduce the provinces to legislative impotence. A province with no other sources of revenue than federal

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13 **Brief submitted by the Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 396, Queen's Printer, 1946.**

14 **Ibid., p. 407 (quotation).**

15 **Ibid., p. 406 (quotation).**

16 **Opening speech by Maurice Duplessis, Canadian Intergovernmental Conference, Ottawa, October 1955, p. 10 (quotation), Queen's Printer, 1955. See also speech by Maurice Duplessis, Federal-Provincial Conference, Ottawa, November 25 and 26, 1957, p. 25, Queen's Printer, 1957.**

subsidies would become a kind of lesser body, under the tutelage of the authority that could dole out its means of subsistence.[17]

18. The provinces' exclusive rights in terms of social legislation, education, civil law, etc., must be preserved and protected in their entirety if Confederation is to survive.[18]

19. Social legislation will be more beneficial if it is better adapted to the needs and cultural aspirations of the population to which it applies. Local interest is then the basis of the general interest and provincial legislatures, because of their closer contact with citizens, are in a better position than the federal government to determine the kinds of legislation that should be passed.[19]

b) Sectorial jurisdiction

20. Québec considers the following areas to be within the exclusive jurisdiction of the provinces: natural resources, the establishment, funding and management of hospitals, asylums and charitable institutions, education at every level, including universities, regulation of the liberal professions, including admission criteria for the practice of medicine and relations between physicians and clients[20], social security, health and public health, and the construction of roads and bridges.[21]

21. The provinces should have exclusive jurisdiction over the following areas: education, property rights and civil law, hospitals, trades and professions, fisheries, marriage, agriculture, municipal and educational institutions, insurance, establishment of an Appeal Court for civil, municipal and educational issues and the appointment of its members, settlement, natural resources, the provincial civil service, administration of criminal and civil justice, the organization and maintenance of courts of civil and

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17 **Brief presented by Maurice Duplessis, Canadian Intergovernmental Conference, Ottawa, October 1955, p. 10 (quotation), Queen's Printer, 1955. See also speech by Maurice Duplessis, Federal-Provincial Conference, Ottawa, November 25 and 26, 1957, p. 25, Queen's Printer, 1957.**

18 **Brief by the Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 407 (quotation), Queen's Printer, 1946.**

19 **Ibid., p. 405 (quotation).**

20 **Ibid., p. 397.**

21 **Onésime Gagnon, Budget Speech, March 25, 1947, p. 27.**

criminal justice in each province, civil procedure and appointment of judges to such courts, clearly defined taxation and borrowing powers over provincial matters.[22]

22. The fact that the Constitution of 1867 specifically grants the provinces the right to levy direct taxes is conclusive evidence that the provinces take precedence in the realm of direct taxation.[23]

23. The areas of personal income tax, succession duties and corporate income and capital tax are within the jurisdiction of the provinces which need them and have constitutional priority over them.[24] Estate duties belong to the provinces; they stem from the Civil Code and the Canadian Constitution, which reserves matters relating to the Civil Code and property rights exclusively to the provinces (...). As to personal income tax and corporate taxes, each province holds exclusive rights in terms of direct taxation for provincial purposes.[25]

c) Unilateral powers

24. Parliament's reserve and disallowance powers should be eliminated.[26]

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22 **Preliminary brief by the Québec government re: Canadian Intergovernmental Conference opening in Ottawa, January 10, 1950, tabled at the Federal-Provincial Conference on the Constitution, Québec City, September 25-28, 1950, p. 100, Queen's Printer, 1950.**

23 **Declaration by Maurice Duplessis, Federal-Provincial Conference, preliminary meeting, Ottawa, April 26, 1955, p. 36, Queen's Printer, 1955.**

24 **Brief by the Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 400, Edmond Cloutier, Queen's Printer, 1946. Speech by Maurice Duplessis, Federal-Provincial Conference, Ottawa, November 25 and 26, 1957, p. 22, Queen's Printer, 1957.**

25 **Opening speech by Maurice Duplessis, Federal-Provincial Conference, Ottawa, November 25 and 26, 1957, p. 22 (quotation), Queen's Printer, 1957.**

26 **Preliminary brief by the Québec government re: Canadian Intergovernmental Conference opening in Ottawa, January 10, 1950, tabled at the Federal-Provincial Conference on the Constitution, Québec City, September 25-28, 1950, p. 101, Queen's Printer, 1950.**

Institutions

25. The members of a Canadian court formed to replace the Privy Council should be appointed by the federal and provincial governments.[27] It is unreasonable and inconsistent with a correct understanding of national unity that the federal government assume the right to unilaterally choose the judges who will decide the respective rights of the parties.[28] Québec considers that the Supreme Court of Canada should satisfy all the criteria required of an impartial referee for constitutional issues and Canadian intergovernmental relations.[29]

26. Issues of civil law, municipal law and education rights should be decided, in the last resort, by a court of appeal established by each province, whose judges would be appointed by each province.[30]

Intergovernmental policy

27. Québec protests against certain federal intrusions into provincial spheres of activity, including the following:

i) Québec protests against the federal initiative of passing family allowance legislation – which it views as a dangerous encroachment on its rights – and, in 1955, passed a provincial family allowance act which, however, it did not implement.[31]

ii) In 1950, Québec refused to sign a federal-provincial agreement on funding the construction of the TransCanada

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27 **Letter from Maurice Duplessis to George Drew, Leader of the federal Conservative Party, April 8, 1947.**

28 **Opening speech by Maurice Duplessis, Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, p. 16 (quotation), Queen's Printer, 1950.**

29 **Preliminary brief by the Québec government re: Canadian Intergovernmental Conference opening in Ottawa, January 10, 1950, tabled at the Federal-Provincial Conference on the Constitution, Québec City, September 25-28, 1950, p. 101, Queen's Printer, 1950 (quotation).**

30 **Ibid., p. 100.**

31 **Rapport de la Commission royale d'enquête sur les problèmes constitutionnels, Province of Québec, Volume 1, 1956, p. 175.**

Highway because, in Québec's view, the agreement did not provide sufficient guarantees concerning protection of the province's rights.[32]

iii) In 1953, Québec blocked a federal proposal to directly fund Canadian universities through the National Conference of Canadian Universities. Québec objected to the federal intention to replace essential provincial financial powers with federal grants and to encroach on the field of education, which is within exclusive provincial jurisdiction.[33]

28. Québec opposes the federal post-war program because it would tend to replace the system of provincial fiscal autonomy with a system of grants that would enable the federal government to exercise financial control over the provinces. Furthermore, the program would deny the provinces access to the most important sources of direct taxation and, to that extent, paralyze their ability to exercise the powers attributed to them by the Constitution.[34]

29. In 1954, Québec passes a provincial income tax equivalent to approximately 15% of the federal tax. Québec demands full deduction of provincial income tax from tax paid to the federal government.[35] With the implementation of this income tax, Québec took another positive step in exercising its rights and fulfilling its duties.[36] Following negotiations with the federal government, Québec obtains an abatement equivalent to 10% of the federal tax.[37]

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32 Ibid., p. 179.

33 Letter from Maurice Duplessis to Stuart Garson, Federal Minister of Justice, September 15, 1954.

34 Brief by the Québec government, Federal-Provincial Conference, April 25, 1946, p. 404, Queen's Printer, 1946.

35 Rapport de la Commission royale d'enquête sur les problèmes constitutionnels, Province of Québec, Volume 1, 1956, p. 153.

36 Onésime Gagnon, Budget Speech, February 12, 1954, p. 16.

37 Report of the Royal Commission of Inquiry on Constitutional Problems, Province of Québec, Volume 1, 1956, pp. 154-155.

Government of Paul Sauvé (September 11, 1959 - January 2, 1960)

Intergovernmental policy

30. The Québec government has no constitutional objection to the federal hospital insurance system.[38]

31. Québec considers that federal grants to universities encroach on an area reserved exclusively for the provinces.[39]

32. Québec demands that the provincial university education tax be tax deductible. Under this plan, commercial companies in Québec would be entitled to a deduction of 10% rather than 9% of the annual tax they pay on their profits. This increase would generate approximately the same amount for Québec's treasury as the federal government makes available to universities in Québec.[40]

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38 Fiscal conference, October 1959.

39 Statement by Paul Sauvé, La Presse, September 18, 1959.

40 Fiscal conference, October 1959. Antonio Barrette, who was named Prime Minister January 8, 1960, signed a final agreement with the federal government implementing Québec's proposal.

Government of Jean Lesage (July 5, 1960 - June 5, 1966)

Québec's status within Canada

33. Québec, as the cornerstone of French Canada, is asking for the equality of Canada's two founding ethnic groups. It is seeking a status that respects its special characteristics.[41]

34. Québec, because of its language, its culture, its links with the international French language community, its economic, social and political institutions, its vitality, its desire to survive and especially to flourish, has all the characteristics of a true society.[42]

35. Québec is working to obtain the powers necessary for its economic, social and political affirmation. To the extent that the other provinces are not working toward the same objectives, Québec will move toward a particular status that will reflect both the specific characteristics of its population and the more extensive role it wishes to assign to its government.[43]

36. Québec wishes to point out that particular status is not necessarily an objective in itself. Initially, it may very well be the result of an administrative development and, subsequently, a constitutional one that, while applicable in principle to the other provinces, in practice would be of interest only to Québec for reasons of its own.[44]

Amending formula

37. To defend its particular status, Québec must have a veto over any important constitutional change that could threaten its powers.[45]

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41 Speech by Jean Lesage, Canadian Club, Calgary, September 22, 1965, p. 1.

42 Speech by Jean Lesage, Canadian Club, Winnipeg, October 1, 1965, pp. 2-3.

43 Speech by Jean Lesage to the Empire & Canadian Club, Toronto, November 16, 1964, pp. 3-4, and to the Ste-Foy Chamber of Commerce, December 14, 1965, p. 5.

44 Speech by Jean Lesage, Canadian Club, Vancouver, September 24, 1965, p. 4.

45 Speech by Jean Lesage, Québec City Chamber of Commerce, Lac Beauport, March 10, 1965, p. 7.

38. Among other things, Québec wants a veto on any change to the distribution of powers.[46]

39. The central government cannot unilaterally amend its constitution. It is essential that the provinces participate in the formation and operation of central bodies.[47]

40. Québec fears that the Fulton-Favreau formula would authorize any province to prevent an increase in the powers of another province. It goes without saying that should this interpretation prevail, it could become very difficult for our constitutional system to evolve as Québec would like.[48]

Distribution of powers

a) General principles

41. The provinces have a clear responsibility for the economic development of their territory. They are better placed than the federal government to produce an economic development policy because they are closer to the specific problems of their people and regions. In addition, they are responsible for the development of human capital through appropriate educational, welfare and health measures, which lie within their jurisdiction.[49]

42. While provincial and interprovincial [economic] policies can be implemented, as circumstances require, with or without the federal government's participation, federal policies must never be decided without consulting the provinces. The only way to avoid

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46 Speech by Jean Lesage, Reform Club of Montréal, March 1, 1965, p. 3.

47 Speech by Jean Lesage, Chamber of Commerce of Québec City, Lac Beauport, March 10, 1965, pp. 4-5.

48 Letter from Jean Lesage to Lester B. Pearson, January 20, 1966 (quotation). Lesage had been willing earlier to allow a veto for all provinces. See the speech by Jean Lesage to the Reform Club of Montréal, March 1, 1965, p. 3 and the speech by Jean Lesage to the Chamber of Commerce of Québec City, Lac Beauport, March 10, 1965, p. 4.

49 Jean Lesage, Budget Speech, April 12, 1962, p. 48, and April 5, 1963, p. 59. See also the opening speech by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 40, Queen's Printer, 1964.

duplication and inefficiency is through on-going consultation by both levels of government.[50]

44. If regional development policies are to be effective, they must satisfy three conditions: they must be adapted to the specific needs of the regions; they must be applied by the government in the best position to respond; they must take into account the whole social and economic policy of the government of the province where the regions are located. The federal government seems to have difficulty adapting its instruments to the needs of Québec's regions. The Québec government is in the best position to implement a truly effective regional policy.[51]

45. Québec defends the principle of provincial autonomy not just because of the principle, but much more because for Québec, autonomy is the vital condition of its affirmation as a people rather than of its survival, which is now secure.[52]

46. The federal government should cease its intrusion into areas of provincial jurisdiction through excessive use of its ancillary power, which leads to the artificial creation of zones of ambiguity and duplication of administrative controls and standards.[53]

b) Sectorial jurisdiction

47. Social assistance, resource development, working conditions,[54] regional development, manpower and employment policy, social security, health services, health insurance, education, roads and land use planning are areas of provincial jurisdiction. They are encompassed by the rights and urgent needs of the provinces which are

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50 **Opening speech by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 48 (quotation), Queen's Printer, 1964.**

51 **Gouvernement du Québec, declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p. 5.**

52 **Opening speech by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 42 (quotation), Queen's Printer, 1964.**

53 **Gouvernement du Québec, declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p. 26.**

54 **Brief submitted by Québec at the Conference on Poverty, Ottawa, December 7-10, 1965, p. 17.**

in a better position than the federal government to have an effective and lasting effect on these areas.[55]

48. In all areas that are wholly or partially within its jurisdiction, Québec henceforth intends to play a direct international role, in accordance with its personality and appropriate to its rights. In addition, Québec intends:

a) to implement international agreements, concluded by the federal government, dealing with issues of provincial jurisdiction;

b) to participate actively and personally in developing international agreements that interest it directly;

c) to participate in the activities of certain international organizations of a non-political nature;

d) to play a direct role in areas that have acquired international importance because of the proliferation of contacts between countries.[56]

49. Québec views social security as an area of provincial jurisdiction, for constitutional, cultural and practical reasons.[57]

c) Unilateral powers

50. It must be clearly established as one of the fundamental rules of our federalism that the exceptional powers of Parliament must

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55 **Gouvernement du Québec, declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965 (see the entire declaration). Moreover, a White Paper of the ministère des Affaires culturelles (1965), which was not tabled in the Legislative Assembly but was made public by the newspaper La Presse in September 1966, states that, under the Constitution, Québec has exclusive responsibility in cultural affairs, particularly in terms of defending and promoting French-language culture within its territory, p. 24.**

56 **Speech by Paul Gérin-Lajoie, Deputy Prime Minister of Québec, before the Consular Corps of Montréal, April 12, 1965.**

57 **Gouvernement du Québec, declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p. 16.**

remain exceptional in nature, and not be used to invade areas that normally lie within provincial jurisdiction.[58]

Language rights

51. The primacy of French in Québec – i.e. its widest possible use on a daily basis – is an essential condition for bilingualism and biculturalism in Canada.[59]

Intergovernmental policy

52. Provincial sovereignty must not be a negative concept incompatible with progress; it must be a living reality that is made tangible in institutions and legislation designed to promote the well-being and spiritual growth of the population.[60]

53. Québec announces that it will invite all provincial Premiers to a meeting to decide whether permanent interprovincial relations should be established.[61]

54. Québec is resolved to end the system of shared-cost programs and, consequently, has withdrawn from such programs instituted by the federal government and demands either fiscal compensation or the tax point equivalent. These shared-cost programs cause costly duplication, reduce provincial initiative in areas recognized by the Constitution to be within provincial jurisdiction and distort the order of priorities established by the provinces.[62]

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58 Gouvernement du Québec, declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p. 27.

59 Speech by Jean Lesage, Reform Club of Montréal, March 1, 1965.

60 Gouvernement du Québec, opening speech by Jean Lesage, Federal-Provincial Conference, Ottawa, July 25-27, 1960, p. 26 (quotation).

61 Ibid., p. 28.

62 Gouvernement du Québec, opening speech by Jean Lesage, Federal-Provincial Conference, Ottawa, July 25-27, 1960, p. 31. Declarations by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 49, Queen's Printer, 1964 and Gouvernement du Québec, Federal-Provincial Conference, Québec City, March 31 and April 1st, 1964, p. 15. See also the Act respecting the replacement of joint programs by tax abatement, S.Q., 1965, C. 8.

55. Québec decides to accept on a temporary basis and maintaining full sovereignty, the conditional grants distributed to the other provinces by the federal government (hospital insurance and Trans-Canada Highway).[63]

56. Québec demands that the federal government transfer to Québec, in the form of tax equivalents, the amounts the federal government wanted to allocate to programs that encroach on provincial jurisdiction: i.e. student loans, education allowances.[64]

57. Québec demands a new tax distribution that will enable the provinces to concentrate on developing their human capital and carry out their responsibilities in terms of economic development. Québec demands 25% of personal income tax, 25% of corporate income tax and 100% of succession duties, including the tax on gifts inter vivos.[65]

58. Québec claims the entire administration of old age security in order to institute its own pension plan.[66]

59. Cooperative federalism does not mean simply obtaining the consent of the provinces to centralizing policies. Rather, for Québec, it means the beginning of a new era in federal-provincial relations and the dynamic adaptation of Canadian federalism. Federalism should express itself in three ways: 1) regular cooperation when decisions are made concerning new policies; 2) constant consultation on the application of policies; 3) sufficient financial

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63 Gouvernement du Québec, opening speech by Jean Lesage, Federal-Provincial Conference, Ottawa, July 25-27, 1960, p. 32.

64 Gouvernement du Québec, declaration by Jean Lesage, Federal-Provincial Conference, Québec City, March 31 and April 1st, 1964, pp. 21-23.

65 Jean Lesage, Budget Speech, April 14, 1961, p. 78 and speech by Jean Lesage to the Legislative Assembly, Journal of Debates, January 16, 1964, p. 72. This demand was repeated many times at other federal-provincial conferences (July 1960 and November 1963).

66 Declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 52, Queen's Printer, 1964, and Gouvernement du Québec, Livre blanc sur le régime des rentes du Québec, 1965. The Lesage government, using the opting out provision of the federal legislation instituting the Canada Pension Plan, established a Québec pension plan in 1965. See Québec Pension Plan, S.Q. 1965, C-24.

resources granted to the provinces to enable them to carry out their greater responsibilities.[67]

60. Québec considers that henceforth, in the normal course of events, federal actions in the regions of Québec will take place through Québec's administrative structures, after it has approved the objectives and means used. Otherwise, there is the possibility that policies based on differing assumptions could nullify each other.[68]

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[67] **Speech by Jean Lesage, honorary Doctorate, Université de Moncton, May 17, 1964, p. 2.**

[68] **Gouvernement du Québec, declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p. 9.**

Government of Daniel Johnson (June 16, 1966 - September 26, 1968)

Québec's status within Canada

61. A new Constitution should be designed so that Canada is not solely a federation of ten provinces, but a federation of two nations equal in law and in fact. From an institutional standpoint, a truly binational order should be established, where the agents of the two cultural communities could work together, on an equal footing, to manage their common interests.[69]

62. The object of the Constitution must not solely be to federate territories, but also to associate as equals two linguistic and cultural communities, two founding peoples, two societies, two nations in the sociological sense of the term. A Canadian constitution must be the product of an agreement between the two nations that make up the people of Canada, and must recognize the principle of the legal equality of the two cultural communities.[70]

63. The Canadian Constitution must take into account the fact that Québec has a special role to play in achieving cultural equality.[71]

64. Canada should call itself Canadian union× and should eventually become a republic.[72]

65. If it is to be viable, the Canada of tomorrow must be founded on a new constitution (...). The constitution must allow for the association of two societies, their cooperation within common ins-

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69 Daniel Johnson, Égalité ou indépendance, 25 ans plus tard, Montréal, VLB éditeur, 1990. See the third part, entitled une constitution nouvelle.

70 Opening speech by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le gouvernement du Québec et la Constitution, 1968, Office d'information et de publicité du Québec, p. 63.

71 Working paper presented by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968. These proposals had been approved by Daniel Johnson (see Les positions traditionnelles du Québec sur le partage des pouvoirs (1900-1976), Gouvernement du Québec, ministère des Affaires intergouvernementales, Éditeur officiel du Québec, 1978, p. 9).

72 Ibid.

titutions, the respect of fundamental collective rights and the normal aspirations of each society.[73]

66. French Canadians, drawing on their majority situation in Québec, must be able to develop structures, institutions and an environment in Québec that are perfectly attuned to their culture and their aspirations.[74]

67. Québec prefers to live within a constitutional system that is sufficiently decentralized to take Québec's situation into account, though without preventing other provinces from leaving to the federal government, or carrying out jointly with it, those responsibilities they do not wish to assume.[75]

Distribution of powers

a) General principles

68. The equality that must be established between Canada's two cultural communities depends not only on a territorial extension of bilingualism, but even more on greater powers for Québec, the home of the French Canadian nation.[76]

69. To ensure the equality of the French Canadian nation, Québec needs greater powers. It wants to make its own decisions in certain areas: 1) development of its human resources (i.e. every aspect of education, social security and health); 2) economic affirmation (i.e. the power to implement economic and financial mechanisms);

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[73] Preliminary statement by Daniel Johnson, Interprovincial Conference on the Confederation of tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 42 (quotation).

[74] Opening speech by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, 1968, p. 57.

[75] Ibid., pp. 59-60.

[76] Ibid., p. 64.

3) cultural expression (arts, letters and the French language); 4) the influence of the Québec community.[77]

70. There are two main reasons why the Québec government is so insistent on regaining full control over social security: first, because the presence of two governments in this field prevents effective social security planning, allows for contradictions between various programs and leads to administrative duplication and waste; second, because social security measures affect the nation's vitality as a society.[78]

71. The new constitutional proposal must have four objectives: 1) clearly define the guiding principles of political life in Canada; 2) establish a new distribution of powers and resources that will allow the French Canadian nation to flourish and English Canada to develop freely; 3) institutionalize or implement intergovernmental mechanisms for consultation, coordination and action; 4) change the way certain existing Canadian institutions and structures operate, modernize others and create new ones so that, overall, they reflect Canada's binational reality.[79]

72. Québec is seeking greater decentralization of powers than currently exists.[80] The Québec government proposes a new distribution of powers whereby all provinces would initially be attributed identical constitutional powers, and a constitutional provision would allow administrative or legislative delegation of powers to the federal government. The provinces themselves, under the new system, would decide the effective extent of their own responsibilities (...). We feel such a situation would not be incompatible with federalism and such solutions should be embraced if

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77 Declaration by Daniel Johnson, fourth meeting of the Tax System Committee, Ottawa, September 14 and 15, 1966 in Le Gouvernement du Québec et la Constitution, 1968, p. 4; see also the preliminary statement by Daniel Johnson, Interprovincial Conference on the Confederation of Tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 45.

78 Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, 1968, p. 76 (quotation).

79 Preliminary statement by Daniel Johnson on the Confederation Tomorrow, Interprovincial Conference on the Confederation of Tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 43 (quotation).

80 Ibid., pp. 44 sq.

they become necessary because of the sociological reality of the country.[81]

73. Québec wants to strip Ottawa of the ability to constantly intervene in provincial affairs by virtue of what are called indefinitely extensible powers.[82]

b) Sectorial jurisdiction

74. Québec considers the following sectors to be within its exclusive jurisdiction: culture, adult education, university research[83], vocational training programs, cooperative training programs and training programs for the jobless[84], urban development and housing, municipal structure, municipal powers and land use planning.[85]

75. The federal government must not have sole jurisdiction over the allocation of broadcast frequencies. Québec cannot tolerate much longer being excluded from an area in which its vital interest is so clear.[86]

76. Québec's constitutional demands can be expressed as follows:[87]

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81 Ibid., p. 47 (quotation); see also the opening speech of Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, pp. 59-60.

82 Speech by Daniel Johnson, Union nationale benefit dinner, Montréal, February 25, 1968.

83 Declaration by Daniel Johnson, Federal-Provincial First Ministers Conference, Ottawa, October 24-28, 1966, pp. 25-27.

84 Declaration by Daniel Johnson, meeting of the Tax System Committee, October 26, 1966, p. 63.

85 Declaration by Daniel Johnson, Federal-Provincial Conference on Housing and Urban Development, Ottawa, December 11-12, 1967, p. 53, Privy Council Office, Ottawa, 1968.

86 Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, 1968, p. 81.

87 Working paper presented by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

i) The provinces should be responsible for establishing high courts and appointing their judges, for the administration of both federal and provincial laws.

ii) The Constitution should make formal provision for the delegation of legislative powers.

iii) In addition to agriculture and immigration, statistics, the census, bankruptcy, radio, television and film, farm products marketing, food and drugs should be areas of joint jurisdiction. In the event of conflict, priority should be given, on a case by case basis, either to federal legislation, or provincial legislation.

iv) Education (in all its forms, at every level) and social security (including all social allowances, old age pensions, family allowances, health and hospitals, manpower placement and training) should be assigned to the provinces exclusively.

v) The following areas should also be placed under exclusive provincial jurisdiction: divorce; business incorporation (except those mentioned as being under federal jurisdiction); the securities industry and control of financial institutions other than banks; labour relations and working conditions for all companies doing business within a province's borders; road transportation; integration of immigrants; public works within a province's borders (except those relating to an area of federal jurisdiction); rehabilitation of inmates; exploration for, conservation and development of resources; land use planning, municipal organization, urban planning, urban development and housing; recreation, leisure and sports.

vi) It should be recognized that the provinces have the authority to negotiate and sign agreements with foreign governments on matters within their internal jurisdiction. Provincial governments should be regularly invited to participate in Canadian delegations at international conferences and meetings of international organizations to which Canada belongs and which affect areas of provincial jurisdiction. Similarly, they should have the right to attend international conferences of interest to them but in which Canada does not participate. In addition, they should have a greater role in foreign aid.[88]

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[88] See also Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le gouvernement du Québec et la Constitution, 1968, pp. 79 and 80.

vii) The provinces should have access to all sources of tax revenue, but property taxes and succession duties should be reserved for them exclusively.

viii) The provinces should be the owners of the public domain, which should extend to the continental shelf. They should have unlimited expropriation powers, except over federal property.

c) Unilateral powers

77. The federal Parliament's reserve and disallowance powers and the declaratory power should be eliminated. The residual power should be transferred to the provinces.[89]

78. The federal spending power should be limited to federal matters alone. However, unconditional grants could be paid to provinces either according to a general equalization formula or to stabilize their revenue.[90]

Individual and language rights

79. The new constitution must include a Charter of human rights applying to the constitutional powers of the central government. For its part, the Québec government intends to add a Charter of human rights to the Constitution of Québec which would apply to areas of Québec jurisdiction.[91]

80. In a country like ours, it is fundamental that the Constitution recognize the collective rights of the two cultural communities (...). We do not want to impose our language indis-

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89 Preliminary statement by Daniel Johnson, Interprovincial Conference on the Confederation of Tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 45.

90 Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, 1968, pp. 75 sq. See also working paper presented by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

91 Preliminary statement by Daniel Johnson, Interprovincial Conference of the Confederation of Tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 44 (quotation).

criminately on all Canadians, but we do want French Canadians, wherever they are in sufficient numbers, to be able to serve their country and be served in their language, as full-fledged citizens.[92]

81. A distinction must be made between individual rights and collective rights. The former are within provincial jurisdiction (civil rights). That is why Québec intends to incorporate a Charter of human rights into its own Constitution.[93]

82. As for collective rights (rights of language minorities), Québec agrees that they be protected in the Constitution. But it considers it is even more pressing and would be more effective to embody them in federal and provincial institutions.[94]

83. In a unitary country with a homogeneous society, declarations of rights can be seen as summations of the moral philosophy accepted by the entire population, and the rights of citizens can be derived therefrom. The result is to entrench in the Constitution a certain homogeneity of ethical concepts whose application is the responsibility of the courts. We feel that in a federal system and particularly in the case of Canada, it would be a serious political mistake to proceed in that way. Québec's civil law tradition and the way in which it recognizes and protects fundamental rights are in fact significantly different from the procedure in common law courts. If therefore we contemplate a declaration of rights that is so basic that the highest constitutional court in Canada must make these rights explicit, we are obliged to demand that the formation of a constitutional court be examined first.[95]

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92 Opening speech by Daniel Johnson, Interprovincial Conference on the Confederation of Tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 22 (quotation).

93 Opening speech by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, p. 61.

94 Ibid., p. 61.

95 Initial reactions of the Québec government to the White Paper tabled in the House of Commons by Pierre Elliott Trudeau, federal Minister of Justice, February 1st, 1968, p. 4 (quotation).

84. The issue of fundamental rights cannot be resolved without agreement on certain basic reforms, in particular the creation of a genuine constitutional court.[96]

Institutions

85. The Constitution should provide for the establishment of a Constitutional Court of which at least 2/3 of whose judges would be appointed by the provinces.[97] The composition of this court should reflect the federal character of common institutions and the Canadian cultural duality.[98]

86. Québec requests the institutionalization of federal-provincial and interprovincial conferences.[99]

87. It would be useful to examine the possibility of transforming the existing Senate into a genuine federal House, with a binational character.[100]

88. The composition of the Bureau of Broadcast Governors and the Canadian Broadcasting Corporation should better reflect the bicultural reality of the country. It is therefore important that Québec itself appoint a proportion, to be determined, of the members of the boards of directors of these agencies.[101]

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96 Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, 1968, pp. 93 sq and especially p. 98.

97 Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

98 Preliminary statement by Daniel Johnson, Interprovincial Conference on the Confederation of Tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 50.

99 Ibid., p. 48 (quotation).

100 Ibid., p. 50 (quotation).

101 Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, 1968, p. 81.

Intergovernmental policy

89. Québec should have sole responsibility within its borders for public spending on all forms of education, old age security, family allowances, health, manpower training and placement, regional development and, in particular, assistance programs for municipalities, research and the fine arts as well as culture and, in general, any other socio-cultural service within the jurisdiction of Québec. Existing federal programs in these areas would be assumed by Québec which, if necessary, would maintain their transferable nature.[102]

90. Québec has no intention of renewing the joint programs from which it has withdrawn. Nor does it plan to enter into new joint programs dealing with areas of exclusive provincial jurisdiction. Instead, it will demand unconditional financial compensation.[103]

91. Joint programs are an obstacle to the free development of Québec society. They impose priorities that could conflict with those it would otherwise establish, not to mention that they reduce its real budgetary independence (...). For a nation like ours, joint programs freeze our fiscal resources and deprive Québec of total control over areas of activity that by law lie within its jurisdiction. In general, then, there is an incompatibility between the system of joint programs and the French Canadian nation's efforts to achieve its essential objectives.[104]

92. Québec demands a net increase in resources that enable it to carry out its constitutional responsibilities.[105] Québec demands 100% use of the three major direct taxes: personal income taxes, corporate income taxes and succession duties. This demand is based on a transfer of tax fields from the federal government to the

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102 Declaration by Daniel Johnson, fourth meeting of the Committee on the Federal-Provincial Tax System, Ottawa, September 14-15, 1966, in Le Gouvernement du Québec et la Constitution, 1968, p. 7. Preliminary statement by Daniel Johnson, Interprovincial Conference on the Confederation of Tomorrow, Toronto, November 27-30, 1967, in Le Gouvernement du Québec et la Constitution, 1968, p. 46.

103 Declaration by Daniel Johnson, fourth meeting of the Committee on the Federal-Provincial Tax System, Ottawa, September 14-15, 1966, in Le Gouvernement du Québec et la Constitution, 1968, pp. 5-6.

104 Ibid., p. 5 (quotation).

105 Ibid., pp. 7-8.

provinces and on the repatriation of federal programs in areas of provincial jurisdiction, in return for tax compensation.[106]

93. Any major rearrangement of the structure of shared taxes must result from the concerted action of all governments.[107]

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106 Ibid., p. 8.

107 Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in Le Gouvernement du Québec et la Constitution, 1968, p. 82.

Government of Jean-Jacques Bertrand (October 2, 1968 - April 29, 1970)

Québec's status within Canada

94. What is important for French Canadians in Québec is not to be able to speak their language anywhere in Canada, but to be able, collectively, to live in French, to build a society in their image. That is possible only if the Québec government has powers in proportion to the tasks the population expects it to carry out.[108]

95. What we must look for is the constitutional system that can reconcile the full development of both cultural communities in Canada with the imperatives of economic solidarity.[109]

96. It is essential that French Canada, of which Québec is the cornerstone, have the conviction that it will find all the elements necessary for its development within the Canadian federation.[110]

Distribution of powers

a) General principles

97. Québec believes freedom of choice will always be necessary in some areas, not only to ensure that Québec has all the autonomy it needs, but also to enable the other provinces to confer on the central government, or to carry out jointly with it, the tasks they do not want to perform solely on their own initiative.[111]

98. Québec demands that the future Canadian constitution be adaptable to the needs of each province. While Québec seeks greater decentralization of power, those provinces that want to should have the freedom to delegate some of their powers to the federal government. That way, Québec could exercise the powers it feels it needs, without preventing a greater degree of centralization or federal intervention elsewhere.[112]

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108 **Opening declaration by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 32, Queen's Printer, 1969.**

109 **Ibid., p. 32.**

110 **Ibid., p. 35.**

111 **Ibid., p. 36.**

112 **Declaration by Jean-Jacques Bertrand, Constitutional Conference, third meeting, Ottawa, December 8-10, 1969, pp. 10-11, Queen's Printer, 1970.**

99. The distribution of powers between the two orders of government must depend not on the good will of the central authority, but on a written constitution that is recognized and respected by all as the fundamental law of the country.[113]

100. The country must adopt a taxation and financial structure that, after a net transfer of resources to the provinces, will enable each of th two sectors of government to satisfy its obligations as effectively as possible.[114]

b) Sectorial jurisdiction

101. Québec endorses the constitutional proposals submitted July 17, 1968 to the Standing Committee of Officials on the Constitutional Conferences, though they do not express the Québec government's final position.[115]

102. Québec considers it has jurisdiction in the following areas: educational radio and television, cultural affairs, urban affairs, underwater mining resources, the securities industry, higher education, university research, water, air and soil pollution, road transportation, foreign relations in education or other sectors of provincial jurisdiction, social development, succession duties[116] and health insurance.[117]

103. Marriage, divorce and, in that case, the establishment of family courts should be within Québec's jurisdiction.[118]

104. Social security, including social allowances, old age pensions, family allowances, health and hospitals, manpower training and placement should be exclusively under provincial jurisdic-

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113 Opening declaration by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 32, Queen's Printer, 1969.

114 Ibid., p. 18.

115 Ibid., p. 29.

116 Ibid., pp. 33-34.

117 Gouvernement du Québec, declaration by Jean-Jacques Bertrand, Federal-Provincial Conference of Ministers of Finance, Ottawa, November 4-5, 1968, p. 16.

118 Declaration by Jean-Jacques Bertrand, Constitutional Conference, third meeting, Ottawa, December 8-10, 1969, p. 11.

tion.[119] The responsibility for social security policy and development cannot be divided. This responsibility, both for cultural and efficiency reasons, must be assumed solely by the Québec government.[120]

105. Québec can accept neither that the federal government act unilaterally to manage or control pollution in provincial bodies of water, nor that its joint action with the provinces be based on the national interest.[121]

Individual and language rights

106. Canada's constitutional problem cannot simply be reduced to a question of individual or language rights. The important point, for French Canadians in Québec, is not to be able, individually, to speak their language even in regions of the country where there is little chance of its being understood; rather, it is to be able to collectively live and work in French, to build a society in their own image.[122]

107. The creation of a charter of provincial rights is just as important to Québec as the creation of a charter of human rights.[123]

108. It is important to ensure that the constitutional recognition of human rights not change the distribution of powers between governments. We would not accept that Parliament legislate in areas of provincial jurisdiction on the pretext that it is implementing the declaration of human rights.[124]

109. A constitutional declaration of human rights must be passed at the same time as the new constitution, but not before. The most

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119 Ibid.

120 Ibid., p. 10 and p. 21.

121 Gouvernement du Québec, declaration by Jean-Jacques Bertrand, Federal-Provincial Conference, February 16-17, 1970, p. 7 (quotation).

122 Opening declaration by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 32, Queen's Printer, 1969.

123 Ibid., p. 35.

124 Declaration by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 314 (quotation), Queen's Printer, 1969.

important constitutional problem is the distribution of powers between the two orders of government.[125]

Institutions

110. The federated states, i.e. the provinces, should be responsible for the establishment of higher courts and provincial courts of appeal and for the appointment of their judges, both for the administration of federal and provincial laws. However, the central legislature should maintain its existing power to establish federal courts for the administration of its own laws.[126]

111. The Constitution must provide for the establishment of a Constitutional Court and determine its composition and jurisdiction. At least two thirds of the judges of this Court should be appointed by provincial governments.[127]

Intergovernmental policy

112. A judicious management of the economy requires much closer cooperation between governments in certain areas of strategic importance.[128]

113. Governments responsible for certain well-defined fields of activity must also have access to resources they can allocate depending on how they intend to carry out these responsibilities. Conditional transfers, grants, and subsidies are therefore completely unacceptable.[129]

114. Québec considers there is an urgent need for the federal government to regionalize its fiscal policy to take into account different economic conditions in various parts of the country.[130]

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125 Ibid., pp. 314-315.

126 Ibid., pp. 414-415 (quotation).

127 Ibid., p. 413.

128 Gouvernement du Québec, declaration by Jean-Jacques Bertrand, Federal-Provincial Conference of Ministers of Finance, Ottawa, November 4-5, 1968, p. 18.

129 Ibid., p. 18.

130 Gouvernement du Québec, declaration of Jean-Jacques Bertrand, Federal-Provincial Conference, Ottawa, February 16-17, 1970, p. 4.

115. Québec proposes to unify and assume control of the federal and Québec family allowance systems.[131] In addition, Québec expresses its firm intention to develop its own family policy.[132]

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131 Brief by Jean-Paul Cloutier, Minister of the Family and Social Welfare, Federal-Provincial Conference, Ottawa, January 16-17, 1969.

132 Jean-Paul Cloutier, Orientation pour une nouvelle politique des allocations familiales du Québec, Ministère de la Famille et du Bien-être social, Québec City, November 1969.

First Government of Robert Bourassa (May 12, 1970 - November 15, 1976)

Québec's status within Canada

116. The precise definition of Québec society within the Canadian federation remains a fundamental problem for Québec.[133]

117. The Québec government believes a genuine affirmation of Quebecers' cultural identity is possible within the federal system. Cultural affirmation means control by Québec, and the financial means and constitutional powers with which it can promote the cultural development of its population.[134]

118. Québec's constitutional policy is premised on the need and desire of Quebecers to, first, head a government that will enable them to develop their own cultural personality and, second, to participate in a prosperous bicultural federation which respects the distinct character of Québec society.[135]

119. Québec will seek to obtain recognition from the rest of Canada of its unique responsibility for the survival and development of French culture. Québec cannot yield this responsibility to others and must obtain the necessary constitutional guarantees to ensure this.[136] The constitutional review must recognize the cultural aspirations of Quebecers as expressed by all governments of Québec with the full support of the people of Québec.[137]

120. Federalism is the best way for Quebecers to achieve their economic, social and cultural objectives (...). The government,

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133 Gouvernement du Québec, declaration by Robert Bourassa, Standing Commission on the Constitution (Victoria Conference), May 18, 1971, National Assembly Debates, B-1274.

134 Inaugural Speech to the second session of the 29th legislature in the National Assembly, February 23, 1971, Journal of Debates, p. 7.

135 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, pp. 6-7.

136 Inaugural Speech, Journal of Debates of the National Assembly, first session of the 30th legislature, November 22, 1973, pp. 22-23.

137 Inaugural Speech, Journal of Debates of the National Assembly, third session of the 30th legislature, March 18, 1975, p. 1.

seeking to comply with the clearly expressed will of the population of Québec, is working to strengthen Canadian federalism. Specifically, it believes that federalism must be decentralized to reflect the diversity of regions of our country. Federalism must also guarantee the provinces the freedom of action they need to carry out their responsibilities to their citizens. Federalism must also enable the Québec government to protect the cultural future of its population.[138]

121. A new Canadian Constitution would be unacceptable if it failed to clearly and concretely recognize the fact that Quebecers are different and form a distinct society that vigorously wants to maintain its social and cultural identity.[139]

Amending formula

122. Québec cannot accept the proposed Victoria constitutional charter. This decision stems from the necessity to agree, as much as possible, on clear and precise constitutional texts, to avoid shifting to the judiciary a responsibility that belongs primarily in the political sector. Specifically, the texts dealing with income security contain an element of uncertainty inconsistent with the inherent objectives of any possible constitutional revision.[140]

123. Québec proposes that the creation of new provinces be subject to the agreement of the existing provinces,[141] according to the original veto formula of the Victoria Charter.

124. The patriation of the Canadian Constitution and the adoption of an amending formula could provide an opportunity for the recognition of Quebecers' cultural rights. In this regard, Québec has a duty to demand clear constitutional guarantees in sectors naturally linked to cultural security, of which communications and immigration have special significance. Quebecers will only agree

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138 **Declaration by Robert Bourassa, Journal of Debates, June 23, 1971, p. 2738 (quotation).**

139 **Speech by Claude Castonguay, Minister of Social Affairs, to members of the Richelieu Club of Québec City, Québec City, January 18, 1971.**

140 **Declaration by Robert Bourassa, Journal of Debates, June 23, 1971, p. 2738.**

141 **Summary account of proceedings, interprovincial meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 12.**

to the patriation of the Constitution if that document provides them with guarantees as to the future of French culture.[142]

Distribution of powers

a) General principles

125. The Québec government has always had a dual objective in terms of constitutional reform, i.e. decentralized federalism and the promotion of Québec's distinct personality.[143]

126. Each order of government must have access to sufficient revenue to cover the cost of programs under its jurisdiction.[144]

127. In concrete terms, Québec's desire for decentralization means obtaining financial resources appropriate to provincial responsibilities, a clarification of these responsibilities in sectors such as regional development and management, and additional powers in the cultural and social fields.[145]

128. If Canada's bicultural character is to be preserved, and its preservation and development is one of Canada's basic objectives, then Québec must be in a position to guarantee the conditions for the development of the French fact. It will succeed by making maximum use of the powers it already holds, and by exercising certain

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142 Speech by Robert Bourassa, Mont-Gabriel symposium, August 24, 1975. See also letter from Peter Lougheed, Premier of Alberta, on behalf of all provincial First Ministers, to Pierre Elliott Trudeau, October 14, 1976.

143 Declaration by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 17.

144 Declaration by Robert Bourassa, Federal-Provincial Conference of Ministers of Finance, Winnipeg, June 5-6, 1970, p. 26 and Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, pp. 16-17.

145 Opening speech by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 16; see also Inaugural Speech, Journal of Debates of the National Assembly, third session of the 30th legislature, March 18, 1975, p. 1.

additional powers that will increase the effectiveness and influence of its linguistic and cultural character.[146]

129. As far as maintaining and developing Québec's identity is concerned, we will base our position on an objective assessment indicating which order of government best serves the public.[147]

130. Québec has always promoted decentralized federalism, which alone is truly adapted to the variety of economic, social and cultural needs of Canadians in every region of the country.[148]

131. Québec would favour the inclusion of a provision in the Constitution enabling delegation of legislative powers between the two orders of government. Legislative delegation would add more flexibility to an often overly rigid distribution of powers. It would correct legal interpretations that failed to respect the spirit of the Constitution, and make it possible to develop regionally-based programs. In addition, delegation of powers establishes various degrees of centralization or of decentralization in the relations between the central government and the provinces and therefore is consistent with the flexibility of federalism.[149]

132. The Québec government is in the best position to understand and define the needs of the population of Québec, especially with regard to education, culture, land use planning and social policy. This principle is valid for the entire constitutional issue.[150]

b) Sectorial jurisdiction

133. Québec claims priority of responsibility for the design of health, social services, income security and manpower policies, while recognizing the essential role of the federal government in securing an acceptable standard of living for all Canadians. The

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146 **Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, September 14-15, 1970, p. 6 (quotation).**

147 **Ibid., p. 4.**

148 **Declaration by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 15.**

149 **Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 10.**

150 **Speech by Claude Castonguay, Minister of Social Affairs of Québec, Annual Meeting of the Society of Actuaries, Toronto, November 1971.**

administration of social policy programs would be shared, however, according to whether the type of program defined by each province lends itself better to a centralized administration, or demands a decentralized management.[151] The important point in the case of programs administered by the federal government is that they be administered under an income security policy established by the provinces and that a satisfactory link be maintained with them.[152]

134. The organization and distribution of health care and social services lies clearly within the exclusive jurisdiction of the provinces.[153]

135. Housing, recreation, local public services facilities, urban development and land use planning are within the provinces' jurisdiction exclusively. The federal government's role in these areas should be limited to financing.[154]

136. Québec wants take an active part in developing and defining government communications policies.[155] Furthermore, Québec should be able to control the development of communications within its borders, establish the general principles that will promote the social, cultural and economic development of the community to be served, regulate the cable and broadcasting sectors, as well as communications companies (programming; rates, except for radio and television) and participate on the boards of directors of federal

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151 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, pp. 10-11. See also declaration by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 17.

152 Declaration by Claude Castonguay, Minister of Social Affairs of Québec, Federal-Provincial Conference of Ministers of Social Welfare, Ottawa, January 1971.

153 Declaration by Claude Castonguay, Minister of Health, Federal-Provincial Conference of Ministers of Health, Ottawa, December 9-11, 1970, Schedule 3, p. 5 (quotation).

154 Gouvernement du Québec, declaration by Robert Bourassa, Conference of First Ministers, Ottawa, November 15-17, 1971, p. 49.

155 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 13.

communications agencies.[156] From a constitutional standpoint, Québec proposes that the provinces acquire preponderant legislative jurisdiction over communications (communications networks within the province).[157]

137. Québec demands the development of mechanisms which ensure that the contribution of Canada and Québec to international development will be the result of common efforts.[158]

138. The tax on companies that develop natural resources should be within the exclusive jurisdiction of the provinces. Québec proposes that succession duties and gift taxes also come under exclusive provincial control and agrees to the principle of open access to other tax sources for both levels of government.[159]

139. As far as energy is concerned, neither the federal government's unilateral action nor the uncoordinated actions of provincial governments will enable us to achieve our necessary goals. Only joint cooperative efforts by both levels of government and by all governments will succeed.[160]

140. As far as immigration is concerned, provincial participation would be to the federal government's benefit, since they are in the

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156 Jean-Paul L'Allier, Minister of Communications, Le Québec maître d'oeuvre de la politique des communications sur son territoire, Éditeur officiel du Québec, 1973, pp. 89-103.

157 Joint proposal by Québec and Saskatchewan, summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 8. See also speech by Jean-Paul L'Allier, Minister of Communications, Federal-Provincial Conference on Communications, Ottawa, November 29-30, 1973.

158 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 13.

159 Notes for Robert Bourassa on the tax reform proposal, Federal-Provincial Committee of Ministers of Finance and Provincial Treasurers, Winnipeg, June 5-6, 1970, p. 23 and Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, pp. 16-17.

160 Declaration by Robert Bourassa, Federal-Provincial Conference of First Ministers on Energy, Ottawa, June 22-23, 1974.

best position to know their manpower requirements and the type of immigrants they would prefer to receive.[161]

141. Québec demands, first, that a Canadian immigration policy be voluntary and involve the active participation of the provinces, in accordance with section 95 of the Constitution. Second, the distribution of these joint powers must be clear: Ottawa will have exclusive powers over the issuing of visas[162], but the provinces will acquire preponderant legislative jurisdiction in terms of settlement, integration and placement of immigrants. In addition, the provinces must participate in the recruiting and selection of foreign nationals who want to immigrate within their borders and must conclude agreements to that effect with the federal government.[163]

142. The elements of the Constitution affecting the administration of justice should be revised to strike a balance between federal and provincial responsibilities.[164] In addition, the respective responsibilities of the federal government and the provinces over custody of inmates should be redefined[165] and the provinces should have jurisdiction over narcotics prosecutions, such as those relating to the Criminal Code.[166]

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161 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 13.

162 Jean Bienvenue, Minister of Immigration, La position du gouvernement du Québec à la suite de la publication du Livre vert fédéral sur la politique canadienne d'immigration, April 1975, document tabled in the National Assembly on May 23, 1975.

163 Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 9.

164 White Paper, La justice contemporaine, presented by Jérôme Choquette, Minister of Justice, April 1975, p. 32.

165 Statement by the Minister of Justice, Federal-Provincial Correctional Sector Conference, Victoria, May 22-23, 1975.

166 Press release, Federal-Provincial Conference of Attorneys General, Vancouver, June 17-18, 1976.

143. Québec proposes that the legislature of each province have exclusive jurisdiction over arts, letters and cultural heritage within the province.[167] The Québec government must have sole jurisdiction over Québec's heritage. Therefore, there is no question of any element of Québec's heritage being included as part of some Canadian heritage determined by the federal government.[168]

c) Unilateral powers

144. Québec proposes that the federal government not exercise its power to pass laws regarding peace, order and good government in areas of exclusive provincial jurisdiction except in the case of a national emergency.[169]

145. The federal government must not use its declaratory power unless the province concerned gives its assent.[170]

146. Though ideally the federal power to spend in areas of provincial jurisdiction should not exist, Québec is prepared to agree to it provided any province that does not participate in a joint program be entitled to financial compensation that would guarantee its freedom to abstain.[171]

147. Québec proposes that the federal spending power in areas of provincial jurisdiction be subject to the prior agreement of the majority of governments (according to the Victoria Charter formula), and that each province have the authority to decide how

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167 Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 7.

168 Speech by Jean-Paul L'Allier, Minister of Cultural Affairs, Heritage Canada annual banquet, September 17, 1976.

169 Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 5.

170 Ibid., Schedule 6.

171 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 16.

amounts allocated for use within its borders are to be applied to implement the programs.[172]

148. Québec recommends that the residual power be transferred to the provinces.[173]

Individual and language rights

149. The Québec government favours the adoption of a Constitutional Charter of human rights. However, this charter should not prevent the adoption of complementary charters at the federal or provincial level, nor change the distribution of powers.[174]

150. Considering that in the majority of cases, protection of human rights comes under provincial jurisdiction, Québec feels it is essential that the respective fields of application of federal and provincial legislation be clearly defined.[175]

151. Language legislation constitutes recognition that in areas that embody Québec's distinct characteristics, legislation passed for the country as a whole is not necessarily appropriate for Québec society. With Bill 22, the government acknowledges that only Québec can legislate in this sector.[176]

Institutions

152. Québec requests the institutionalization of an annual First Ministers Conference on the economy to be used as a special vehicle

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172 Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 3.

173 Ibid., Schedule 4.

174 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 19.

175 Declaration by François Cloutier, Ministre of Intergovernmental Affairs, Federal-Provincial Conference on Human Rights, Ottawa, December 11-12, 1975, p. 3.

176 Speech by Jean-Paul L'Allier, Minister of Communications, Journal of Debates of the National Assembly, July 13, 1974, debate on second reading of Bill 22, pp. 1789-1790.

for coordinating and planning federal and provincial economic policies.[177]

153. Québec believes that a constitutional court representative of the federation is essential to maintaining a new constitutional balance.[178] Moreover, the provinces should be able to submit names of candidates for appointment to the Supreme Court and refer legal questions to the Supreme Court. Provincial approval should be required to change the jurisdiction of the Supreme Court.[179]

Intergovernmental policy

154. The Québec government must be involved in the central government's decision-making process on questions with a significant influence on Québec's economic, social and cultural development.[180]

155. A prerequisite to constitutional reform is improved fiscal and economic relations between governments, with a view to implementing a new economic federalism.[181]

156. Regarding fiscal and economic issues, coordination of federal and provincial initiatives needs to be improved both to enable Canadian federalism to carry out its function of redistributing

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177 Gouvernement du Québec, declaration by Robert Bourassa, First Ministers Conference, Ottawa, November 15-17, 1971, pp. 10-11.

178 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 20.

179 Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 14.

180 Gouvernement du Québec, declaration by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 5. See also declaration by Robert Bourassa, Standing Commission on the Constitution (Victoria Conference), Debates of the National Assembly, May 18, 1971, B-1273.

181 Gouvernement du Québec, declaration by Robert Bourassa, Federal-Provincial Conference of Ministers of Finance, Winnipeg, June 5-6, 1970, p. 4.

wealth across the country and to give rise to genuine cooperative efforts.[182]

157. Redistribution of wealth among provinces is not limited to equalization. The regional effects of the central government's total revenue and spending must also be taken into account, so that the shortfall in federal spending in Québec does not cancel the redistributive effect of equalization.[183]

158. Québec proposes the creation of an economic assistance fund that would play a short-term compensating role by correcting the regional impact of an unfavourable economic situation or of federal policies that exacerbate the unemployment rate in some provinces. Financed from certain federal taxes, this fund would make both unconditional payments and loans at preferred interest rates.[184]

159. Québec announces that it wishes to end the provisional arrangements concerning hospital insurance and health insurance programs and replace them with a definitive withdrawal formula. This formula would involve unconditional payments.[185]

160. With respect to fiscal compensation for withdrawal from shared-cost programs, Québec prefers to collect its own taxes rather than receive financial compensation.[186]

161. Québec submits three proposals for the fiscal arrangements:

a) federal withdrawal from three joint programs (health insurance, hospital insurance, post-secondary education), in exchange for a satisfactory unconditional transfer to the provinces;

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182 Gouvernement du Québec, declaration by Robert Bourassa, First Ministers Conference, Ottawa, November 15-17, 1971, pp. 2, 10 and 11.

183 Gouvernement du Québec, declaration by Robert Bourassa, Federal-Provincial Conference of Ministers of Finance, Winnipeg, June 5-6, 1970, pp. 38-40.

184 Ibid., pp. 31-33, and declaration by Robert Bourassa, First Ministers Conference, Ottawa, November 15-17, 1971, p. 22.

185 Gouvernement du Québec, declaration by Robert Bourassa, First Ministers Conference, Ottawa, November 15-17, 1971, p. 31.

186 Ibid., p. 40.

b) elimination of the tax receipts guarantee program and integration of the amounts involved in other transfers to the provinces including a substantial portion in equalization;

c) an equalization formula based on a global indicator of wealth that would equalize all or a fixed proportion of provincial, municipal and school revenues at a level above the national average.[187]

162. The government's main priorities in terms of federal-provincial relations are: 1) the issue of financing, with a view to achieving a distribution of resources that is more consistent with the constitutional responsibilities of the federal and provincial governments; 2) economic development, specifically concerning regional disparities and unemployment; 3) social development, especially income security problems; 4) Québec's cultural affirmation.[188]

163. Québec proposes that provincial ministers meet at least once a year to review legal decisions of a constitutional nature, other questions related to the Constitution and, if necessary, to finalize any proposed amendment to the Constitution.[189]

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187 Opening speech by Robert Bourassa, Federal-Provincial First Ministers Conference, Ottawa, June 15-16, 1976.

188 Inaugural Speech, Debates of the National Assembly, March 15, 1973, p. 1 (quotation).

189 Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 11.

Government of René Lévesque (pre-referendum period, November 25, 1976 - May 20, 1980)

A. Sovereignty-association proposal[190]

Québec's relation with Canada

164. Québec advocates a constitutional formula, to replace existing federalism, by which it would acquire political sovereignty and would form an economic association with the rest of Canada. According to this formula, Canada and Québec would both enjoy the same international status. Their relations would no longer be governed by a constitution, but by a treaty of association. However, they would continue to have a single tariff and a single currency. Québec wishes to conclude an economic association with the rest of Canada based on a monetary union.

Definition of sovereignty

165. Under the sovereignty-association formula, Québec's sovereignty would be expressed as follows:

a) only laws passed by the National Assembly would be in force in Québec;

b) only taxes stipulated by Québec legislation could be levied in Québec;

c) Québec would retain its current borders; a resolution of the uncertainties concerning jurisdiction over the Gulf, Labrador and the Arctic regions would be desirable;

d) Québec citizenship and a separate passport would be created -with the possibility of an agreement with Canada on a common passport;

e) the anglophone minority would continue to enjoy the rights it is guaranteed by law;

f) the Amerindian and Inuit communities would have institutions on their lands designed to protect the integrity of their societies and enable their free development;

g) Québec would continue to be bound by treaties to which Canada is a party; Québec would become a member of the

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190 **Gouvernement du Québec, Conseil exécutif, La nouvelle entente Québec-Canada : proposition du Gouvernement du Québec pour une entente d'égal à égal: la souveraineté-association, Éditeur officiel du Québec, 1979.**

International Joint Commission, would maintain its links with NATO and NORAD and would apply for UN membership, including membership in its specialized agencies;

h) only Québec courts would be empowered to render justice in Québec.

Areas of activity shared with Canada

166. The community association treaty Québec would sign with Canada would be designed to maintain the current economic zone. It would define shared areas of activity and those subject to harmonization of national policies and legislation.

167. The shared areas of activity would be the following:

a) free circulation of merchandise, including setting a common customs tariff, with special treatment of agriculture;

b) a monetary union (money creation, exchange rate policy);

c) free circulation of persons.

168. The following areas would be subject to harmonization:

a) rail, marine and air transport legislation;

b) rules governing the labour market and residency rights;

c) economic policy, overall balance of payments equilibrium, currency stability;

d) defence.

Institutions common to Québec and Canada

169. The administration of a community association treaty would be assigned to common supranational institutions. The principle of the legal equality of the partners would be recognized in the operation of these institutions (in some cases, Québec would have a veto, in others, a vote proportional to its economic and demographic weight). This would involve establishing:

a) A Community Council. Composed of ministers mandated by Québec and Canada, with the chair alternating between the two, it would decide fundamental issues requiring the agreement of Québec and Canada;

b) A Commission of Experts. Formed of experts appointed for a fixed term, it would act as a general secretariat to the Québec - Canada Community and would administer Community customs and trade policies;

c) A Court of Justice. Made up of an equal number of judges appointed for a fixed term, with the Chief Justice chosen jointly by the two states, it would have exclusive jurisdiction over the interpretation and implementation of a treaty of association and its decisions would be binding on both parties;

d) A Monetary Authority. Chaired, alternately, by a governor appointed by each government, with representation proportional to the size of each economy, it would be in charge of money supply and would act on the exchange rate.

170. While a community parliamentary assembly is not proposed, an interparliamentary assembly could be examined.

B. Demands within the federal structure

Québec's status within Canada

171. A lasting solution to the constitutional issue presupposes recognition of the Québec-Canada duality.[191]

Amending formula

172. Québec will never agree, under the existing system, to the patriation of the Constitution and to an amending formula as long as the whole issue of the distribution of powers has not been settled and Québec has not been guaranteed all the powers it needs for its development.[192]

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191 Gouvernement du Québec press release, Federal-Provincial First Ministers Conference, Ottawa, October 30 and November 1, 1978.

192 Ibid. See also Dossier sur les discussions constitutionnelles 1978-1979, presented to members of the Commission parlementaire de la Présidence du Conseil et de la Constitution by Claude Morin, Minister of Intergovernmental Affairs and Marc-André Bédard, Minister of Justice, January 12, 1979: note on the patriation and amendment of the Constitution, p. 30.

Distribution of powers

a) General principles

173. The federal government should eliminate certain activities in areas where the provinces have more or less similar programs that match their needs more closely. It should also abstain from carrying out tasks which the provincial governments can do more economically and effectively.[193]

174. To resolve economic problems, the federal government must comply with agreements already signed instead of modifying them unilaterally, and, to prevent economic problems from being lost in jurisdictional squabbles, it must respect the jurisdiction of provincial governments.[194]

175. Québec demands provincial access to all forms of taxation, except customs duties.[195]

176. The Canadian economy is not a large homogeneous whole that can be successfully controlled and manipulated using standard policies and formulae. Provincial governments are in the best position to act, since they know their own economic context and its component factors, i.e. resources, industrial structure, domestic market, social climate, etc, best.[196]

b) Sectorial jurisdiction

177. Québec proposes a territorial partition of the Gulf of St. Lawrence, by means of lines equidistant from the shores of the Gulf, according to an agreement reached in 1964 between Québec and the Atlantic provinces.[197]

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193 Speech by René Lévesque, Federal-Provincial First Ministers Conference, Ottawa, February 13-15, 1978, Canadian Intergovernmental Conferences Secretariat (CICS), doc 800-7/056, p. 7.

194 Ibid., p. 7, and declaration by René Lévesque at the end of the Conference, First Ministers Conference on the Economy, Ottawa, November 29, 1978, CICS, doc 800-9/086.

195 Dossier sur les discussions constitutionnelles 1978-1979, note on indirect taxation, p. 11.

196 Declaration by René Lévesque, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc 800-9/040, p. 6.

197 Ibid., note on off-shore resources, p. 19.

178. Concerning ore and other resources located outside the immediate territory of the provinces in the 200 mile economic zone, Québec advocates concurrent jurisdiction with provincial legislation taking precedence. The exception would be the distribution of mining duties among provinces, where federal authority could take precedence until the provinces concerned reach an agreement on the matter.[198]

179. The provinces should have exclusive jurisdiction over fisheries within their territory. Outside the Gulf of St. Lawrence, in the 200 mile economic zone, Québec would be prepared to concurrent jurisdiction. With the exception of distribution of quotas where federal authority would take precedence, provincial legislation should have priority.[199]

180. The Québec government should have primary responsibility for strategies to modernize and convert certain industries in Québec, though it agrees with the need for cooperation with the federal government in this matter. Québec has frequently asserted that it considers itself in the best position to provide effective assistance to small and medium-sized businesses.[200]

181. Québec considers that it is primarily responsible for defining its industrial strategy, while acknowledging the need for cooperation with the federal government in the matter.[201]

182. The rules concerning the interventions of both governments in the area of scientific research must be redefined. The aim should be a fair distribution of resources, recognition of Québec's needs and priorities, respect for Québec's development policies, and concerted action and coordinated initiatives by those involved. The federal government must not intervene in the area of scientific

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198 Ibid., p. 19.

199 Ibid., note on fisheries, p. 17.

200 Québec document on industrial development, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc 800-9/050, p. 11.

201 Declaration by Rodrigue Tremblay, Minister of Industry and Commerce, Federal-Provincial Conference of Ministers of Industry, Ottawa, January 30, 1978, CICS, doc 830-45/006, p. 14.

research in Québec without the prior agreement of the Québec government, which has primary responsibility for science policy.[202]

183. It is essential that any future cultural policy for Canada fully recognize the distinct cultural character of Québec, insofar as the development, promotion and protection of this character are concerned. How can this be achieved except through the Québec government's control over the sector that influences culture on a daily basis: communications?[203]

184. The necessity of Québec's intervention in the area of communications rests on the imperatives of civilization, cultural necessities, and its responsibility to develop and apply a coherent communications policy. (...) The Québec government, a daily participant together with the population in the life of Québec, is in the best position to appreciate the reality of Québec and reflect that reality in appropriate regulations.[204]

185. The Québec government would like to see a constitutional power sharing formula used in communications. This formula proposes that when a provincial law requires provincial telecommunications companies to obtain an operating license, any federal company operating or wishing to operate in Québec must obtain a license from the provincial regulatory agency.[205] Québec maintains that pay-TV falls within its jurisdiction.[206]

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202 Minister of State for Cultural Development, Pour une politique québécoise de la recherche scientifique, Québec City, Éditeur officiel du Québec, 1979, pp. 72-73.

203 Opening declaration by Denis Vaugeois, Minister of Communications, Federal-Provincial Conference of Ministers of Communications, Toronto, October 16-17, 1979 (quotation), CICS, doc 800-11/027, p. 3.

204 Gouvernement du Quebec, document on federal legislation and delegation of powers, Federal-Provincial Conference of Ministers of Communication, Charlottetown, March 29-30, 1978 (quotation), CICS, doc 830-39/018, p. 4.

205 Ibid., p. 6.

206 Gouvernement du Québec, document on pay-TV, Federal-Provincial Conference of Ministers of Communications, Charlottetown, March 29-30, 1978, CICS, doc 830-39/32, p. 2; see also the document of the Gouvernement du Québec, Federal-Provincial Conference of Ministers of Communications, Toronto, October 16-17, 1979, CICS, doc 830-54/022, p. 2.

186. It is essential that the Québec government participate on at least an equal footing with the federal government and other provincial governments in developing policies on satellites and in decision-making.[207]

187. Since mineral resources and their management are under provincial jurisdiction (BNA Act, Sec. 109), it is up to the provinces to decide on the best ways to ensure the viability and growth of their mining industry.[208]

188. Québec considers it is in the best position to design and implement an appropriate economic development policy for its people.[209]

189. Québec maintains that the provinces have exclusive ownership of their natural resources.[210]

190. Provinces that wish to should be able to exercise exclusive jurisdiction over tourism and receive the unconditional transfer of federal funds currently allocated for this purpose.[211]

191. Québec demands complete and exclusive jurisdiction over recreation. The links between culture and recreation are too strong

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207 Gouvernement du Québec, document on policies relating to satellites, Federal-Provincial Conference of Ministers of Communications, Toronto, October 16-17, 1979 (quotation), CICS, doc 830-54/022, p. 2.

208 Declaration of the Gouvernement du Québec, Federal-Provincial Conference of Ministers of Mines, Toronto, January 19-20, 1978 (quotation), CICS, doc 830-9/009, p. 1.

209 Notes for a declaration by René Lévesque at the end of the First Ministers Conference on the Economy, Ottawa, November 27-29, 1978 (quotation), CICS, doc 800-9/086, p. 2.

210 Speech by Yves Bérubé, Minister of Energy and Resources, First Ministers Conference on Energy, Ottawa, November 12, 1979, CICS, doc 800-11/027, p. 8.

211 Gouvernement du Québec, document on tourism, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc 800-09/048, p. 2.

to allow another government body to intervene in Québec. The federal government's responsibility would be limited to funding.[212]

192. The Québec government claims primary responsibility for its cultural and natural heritage and demands that bilateral negotiations between Québec and Ottawa be opened immediately concerning the restitution of cultural properties, sites and historic places owned or managed by the federal government within Québec, as well as the integration of federal parks into the Québec parks network.[213]

193. Québec demands that jurisdiction over all correctional services be ceded to the provinces, subject to the transfer of the corresponding financial resources. There seems to be little rational basis for the current division of responsibilities, the result being duplication in certain areas, including the administration and management of institutions, parole and community supervision.[214]

194. Social services areas come under the exclusive jurisdiction of the provinces.[215]

195. Health comes under the exclusive jurisdiction of the provinces.[216]

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212 Declaration by Claude Charron, Minister responsible for the Haut-Commissariat à la Jeunesse, aux Loisirs et aux Sports, Interprovincial Conference of Ministers of Sports and Recreation, Winnipeg, May 31 and June 1, 1977, taken from Québec-Canada, ministère des Affaires intergouvernementales, vol. 5, no. 3, May-June 1977, p. 1.

213 Press release from the office of Yves Duhaime, Minister of Tourism, Game and Fishing, Federal-Provincial Conference on Parks, Victoria, September 25 and 26, 1978.

214 Press release, office of the Minister of Justice, Federal-Provincial Conference of Attorneys General and Ministers Responsible for Correctional Services, Ottawa, June 27, 1977, CICS, doc 830-32/023.

215 Declaration by Denis Lazure, Minister of Social Affairs, Federal-Provincial Conference of Ministers of Social Welfare, Ottawa, March 6-7, 1978, taken from Québec-Canada, ministère des Affaires intergouvernementales, vol. 7, no 3, March 1978, p. 2.

216 Declaration by Denis Lazure, Minister of Social Affairs, Federal-Provincial Conference of Ministers of Health, Ottawa, June 22-23, 1977, taken from Québec-Canada, ministère des Affaires intergouvernementales, vol. 5, no 4, July 1977, p. 2.

196. The provinces have exclusive responsibility for deciding whether or not to intervene in collective negotiations that come under their jurisdiction. Québec intends to maintain room to manoeuvre in labour relations, convinced that it and it alone must set its priorities in this area.[217]

c) Unilateral powers

197. The federal spending power should be limited solely to areas listed as within exclusive or concurrent federal jurisdiction. However, a decision is needed on the method of compensation for provinces that decide not to participate in federal programs.[218]

198. Québec demands the elimination of the federal declaratory power, given that provinces enjoy internal sovereignty over their areas of jurisdiction.[219]

Individual and language rights

199. If all provinces were to demand a charter, Québec would oppose the inclusion of rights other than those that have been seriously tested in the courts, so as to avoid the disadvantages of an entrenched charter as much as possible.[220]

200. Québec opposes the inclusion in the Constitution of language rights whose effect would be to restrict its leeway in a sector that is so vital to its collective development. Québec cannot accept that its autonomy in this area be replaced by limited jurisdiction subject to interpretation by the courts.[221]

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217 Notes for the Québec delegation on the issue of labour relations in the post-controls period. Federal-Provincial Conference of First Ministers, Ottawa, February 13 to 15, 1978, CICS, doc 800-7/062, pp. 1 and 5.

218 Dossier sur les discussions constitutionnelles 1978-1979, note on the federal spending power, p. 6.

219 Ibid., note on the declaratory power, p. 7.

220 Ibid., note on the charter of rights and freedoms, p. 23 (quotation).

221 Letter from René Lévesque to Pierre Elliott Trudeau, September 9, 1977.

Institutions

201. Québec is of the view that reform of the division of powers must precede that of central institutions, including the Senate. The goal of Senate reform must be real representation of the provinces at the central level, and their participation in the exercise of federal power. However, if the Upper House is truly to represent the provinces, its members must be appointed by provincial governments for a limited term. Furthermore, Québec believes it would be difficult to determine the composition and powers of a new Upper House in which the provinces would participate in the exercise of federal powers as long as these powers have not been redefined. In general, on the Senate issue, Québec reiterates the Johnson position of 1968. The Senate's composition and operation should reflect the Canadian duality.[222]

202. Québec seeks the creation of a constitutional court the majority of whose judges would be directly appointed by the provinces. Furthermore, if a matter referred to a court raises a constitutional issue that is deemed serious, procedures should be suspended and the issue immediately referred to the constitutional Court.[223]

203. Québec demands that the Québec Court of Appeal be the court of final appeal in matters relating to Québec civil law, and that each order of government be charged exclusively with appointing judges to courts under its own jurisdiction, which, consequently, would cover judges of the Superior Court and the Court of Appeal.[224]

204. Québec is opposed to any increase in the Governor General's authority.[225]

Intergovernmental policy

205. Québec objects to the many federal cutbacks that are gradually forcing it into an increasingly difficult financial situation. The federal strategy appears to be to bring Québec to accept federal

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222 Dossier sur les discussions constitutionelles 1978-1979, note on the Senate, p. 27.

223 Ibid., note on the Supreme Court, p. 25.

224 Ibid.

225 Dossier sur les discussions constitutionnelles 1978-1979, note on the monarchy, p. 28.

priorities, federal programs and federal transfers to individuals as its own.[226]

206. Québec demands a new distribution of taxation that reflects the provinces' relatively smaller fiscal leeway compared to the federal government and the special situation of Québec. Unlike other provinces, Québec has set up its own programs and has had to increase Quebecers' tax burden and public debt substantially.[227]

207. Québec proposes that the federal government make annual unconditional equalization payments to the provinces so that each province can, according to its fiscal capacity, provide comparable public services at comparable rates of taxation, with a view to reducing social and economic disparities in Canada.[228]

208. Québec is prepared to negotiate reciprocal agreements with other provinces that would provide citizens of other provinces who settle in Québec with access to English schools according to the terms and conditions that apply to anglophones in Québec.[229]

209. Three principles apply to the issue of aboriginal peoples: 1) any attempt to determine their future for them must be rejected; these communities are responsible for making decisions on their development, which assumes they will fully discuss their social and cultural status; 2) aboriginal peoples must not be left to fend for themselves using only their own resources; they must be able to rely on support from the Québec government; 3) aboriginal communities have a responsibility to develop institutions and strategies that suit their cultural development.[230]

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226 Speaking notes for the Minister of Finance of Québec, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc 800-9/036, p. 11.

227 Budget Speech delivered by Jacques Parizeau, Minister of Finance, Minister of Revenue and Chairman of the Conseil du Trésor, Journal of Debates, April 12, 1977, pp. 593-595.

228 Dossier sur les discussions constitutionnelles 1978-1979, note on equalization and regional disparities, p. 9.

229 Declaration by the Prime Minister of Québec on reciprocal education agreements, Eighteenth Annual Provincial Premiers Conference, St. Andrews, New Brunswick, August 18-19, 1977, CICS, doc 850-8/012, p. 4.

230 La politique québécoise du développement culturel, volume 1, Minister responsible for Cultural Development, Québec City, Éditeur officiel du Québec, 1978, pp. 89 and 90.

Government of René Lévesque, post-referendum period, May 21, 1980 to May 1985

Québec's status within Canada

210. Canada is made up of two equal nations; Québec is the home and foundation of one of these nations and, having the attributes of a distinct national community, enjoys an inalienable right to self-determination. The right to self-determination is the most fundamental right of Québec society.[231]

211. The manifest recognition of the right to self-determination is the most valuable gain arising from Québec's referendum (...). There is no longer any question that Québec forms a distinct national community that can independently decide its constitutional status, without outside intervention (...). The right to control its own national destiny is the most fundamental right Québec society possesses.[232]

212. The fundamental issue for Québec in its federal-provincial relations is the following: is it possible to renew Canadian federalism in such a way that Québec can, within this system, exercise the powers and control the levers necessary for it to fulfil its role as the home and homeland of one of the constituent nations of Canada?[233]

213. To be valid, a renewal of the federal system must include concrete recognition of Québec's national identity and of the future requirements inherent in that, whether in terms of culture, communications, economic development and social policy.[234]

214. According to the wishes of Canadians, the provinces, in concert with the federal government, want to remain freely united in a federation, as a sovereign and independent country, under the

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231 Speaking notes for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, Dossier sur les discussions constitutionnelles, Commission de la présidence du conseil et de la Constitution, Québec City, August 14-15, 1980, index 1, pp. 2 and 3.

232 Ibid., p. 1 (quotation).

233 Speech by René Lévesque to the National Assembly, Journal of Debates, Fourth Session of the 31st Legislature, June 5, 1980, p. 5992.

234 Opening declaration by René Lévesque, Federal-Provincial First Ministers Conference on the Constitution, Ottawa, September 8-13, 1980, CICS, doc 800-14/037, pp. 5, 6 and 7.

Crown of Canada, with a constitution that is similar, in terms of its principles, to the existing constitution.[235]

215. The fundamental goal of the federation is to preserve and promote freedom, justice and the well-being of all Canadians. That is, to:

i) protect individual and collective rights, including those of aboriginal peoples;

ii) ensure that laws and political institutions are based on the will and consent of the people;

iii) promote the economic aspirations, security and development of the various cultural groups in Canada;

iv) recognize the distinct character of the people of Québec which, with its francophone majority, is one of the pillars of the Canadian duality;

v) contribute to the freedom and well-being of humanity.[236]

Amending formula

216. Provided the government of Canada withdraws its patriation proposal, Québec would agree to an amending formula in which:

a) in general, a constitutional amendment would require approval by the federal Parliament and seven provinces representing at least 50% of the population of Canada;

b) any province could withdraw, with reasonable compensation, from a constitutional amendment (passed according to the above formula, excepting those concerning Senate reform and the Supreme Court, among others) that reduces the legislative authority, property rights or other rights or privileges of the legislature or government of a province;

c) any constitutional change concerning the office of the Queen, the Governor General and the Lieutenant Governor, use of French or English, the composition of the Supreme

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235 **Proposal by the Québec government on the preamble and statement of purpose of the Constitution, Federal-Provincial First Ministers Conference on the Constitution, Ottawa, September 8-13, 1980 (quotation), CICS, doc 800-14/081.**

236 **Ibid.**

Court and changes to the amending formula, among others, requires unanimous consent.[237]

217. Québec will agree to the Constitution Act, 1982 subject to four conditions: 1) recognition of the principle of equality of the founding peoples and the distinct character of Québec as a society; 2) a veto or general opting-out right with full financial compensation; 3) non-application of section 23 to Québec; and 4) abrogation of the Charter's mobility rights.[238]

Distribution of powers

a) General principles

218. Affirmation of the basic equality of the two founding peoples cannot occur within Canadian federalism unless Québec is granted a unique role and the ability to exercise a set of special powers.[239] These powers affect education (including adult education), communications (radio, television, cable distribution and pay-TV), social policy, immigration, economic development, natural resources and Québec's international affirmation.[240]

219. Québec's expectations from the resumption of constitutional negotiations are:

a) that they acknowledge the existence of a distinct society in Québec that wants to be recognized as such, that is free to decide its future and intends to maintain the cultural, economic and language tools to affirm itself and develop according to its own aspirations and needs, and to acquire the tools it currently lacks;

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237 Constitutional agreement, Canadian proposal for the patriation of the Constitution, April 16, 1981; document signed by all the provincial First Ministers, except those of Ontario and New Brunswick.

238 Motion passed by the National Assembly December 1, 1981; see also letter from René Lévesque to Margaret Thatcher, December 19, 1981 and letter from René Lévesque to Pierre Elliott Trudeau, December 17, 1982.

239 Speaking notes for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, Dossier sur les discussions constitutionnelles, index 1, p. 4.

240 Speech by René Lévesque to the National Assembly, Journal of Debates, Fourth Session of the 31st Legislature, June 5, 1980, pp. 5995-5999.

b) that they result in a clarification of the distribution of powers and a significant reduction in areas of federal-provincial overlapping;

c) that the federal government acknowledge that the provinces are not regional administrative entities, but major, responsible partners.[241]

220. Québec denounces the encroachment on provincial jurisdiction caused by the imposition of federal national standards that, through the federal spending power, erode the distribution of powers between the two orders of government. It is unacceptable to Québec that the federal government implement an inspection and monitoring system in a sector of provincial jurisdiction such as health, that it pay grants to municipalities directly and make payment of its contributions subject to compliance with the criteria of national objectives, in particular in education. If provincial jurisdiction is to be defended, the provinces must effectively exercise their powers, fully occupy their areas of jurisdiction and the federal spending power must be limited, with the latter a priority.[242]

221. Québec and the provinces in general must have real economic powers.[243] Québec proposes that certain economic powers be decentralized. It also wants to increase the means at its disposal to stimulate growth within Québec and correct market imbalances, and does not agree economic under-development be mitigated by higher transfer payments.[244]

222. The Québec government has always maintained that it cannot accept a pan-Canadian approach to economic policy. Regional differences in Canada and the disparities in development in each region are too marked to think that standardized measures can be

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241 Preliminary declaration by Claude Morin, Minister of Intergovernmental Affairs, Comité permanent de ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index B, p. 3.

242 Statement by René Lévesque on the current situation and priorities for the future, Annual First Ministers Conference, Charlottetown, 1984.

243 Notes of the Québec government on the powers affecting the economy, meeting of the Comité permanent des ministres sur la Constitution, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 4, p. 3.

244 Comments by Québec on the federal positions relating to economic powers, Vancouver, July 22-24, 1980, Dossier sur les discussions constitutionnelles.

effective everywhere to the same degree. The Québec government is surely in the best position, if it is given the means, to promote economic development.[245]

223. The government nearest the people is in the best position to appreciate the circumstances of the various groups making up the population and is best able to adapt its legislation, programs and services to their needs. The current status of women is an outstanding example of the need for the central government to respect provincial primacy and autonomy in order to protect women's rights and improve their situation. For this reason, Québec immediately rejects the idea of a national action plan.[246]

b) Sectorial jurisdiction

224. Québec demands that provincial legislative primacy in the realm of communications and communications systems be written into the Constitution, including: 1) reception and transmission within the province of signals from outside the province; 2) transmission outside a province of signals originating inside the province; 3) ownership and management of communications and communications systems; 4) programming, including commercial advertising; 5) authority to issue operating licenses, as well as the specific assignment of frequencies and other technical operating standards. The federal Parliament would be authorized to legislate exclusively in areas such as 1) general management of broadcast frequencies; 2) use of communications and communications systems for aeronautics, defence or national emergencies; 3) matters relating to the Canadian Broadcasting Corporation, whose development plans would, however, be subject to approval by the government of a province for activities within that province.[247]

225. Québec requests that the federal government respect provincial jurisdiction over closed-circuit television services and proposes

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245 Gouvernement du Québec, document on economic development, Federal-Provincial Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc 800-16/018, p. 4.

246 Speaking notes for Pauline Marois, Minister responsible for the Status of Women, Federal-Provincial-Territorial Conference of Ministers Responsible for the Status of Women, Ottawa, May 31 and June 1, 1983 (quotation), CICS, doc 830-129/019, pp. 3-4.

247 Notes of the Québec government on communications, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossiers sur les discussions constitutionnelles, index 8, pp. 1-3.

that any business wishing to distribute a pay-TV service be required to satisfy conditions set by the province.[248]

226. Québec considers that in the Gulf of St. Lawrence its territory extends to the median lines dividing its shores. As for the ore and other resources on the continental shelf or within the 200 mile economic zone, while admitting concurrent federal jurisdiction, Québec advocates that the Constitution recognize provincial legislative primacy. The distribution of mining duties between provinces should be settled by agreement among them and, in the meantime, remain under federal authority.[249]

227. Québec proposes to add fishing and fisheries within the provinces to the list of areas over which the provinces would have exclusive legislative power, and to eliminate this power from the list of areas subject to exclusive federal legislative authority. A provision must be added to the Constitution defining the rights of the provinces bordering on the Gulf of St. Lawrence and specifying that the limits of the provinces of Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland extend to the median lines equidistant from their respective Gulf shores.[250]

228. The Québec government agrees that the principle of unconditional federal payments to the provincial governments should be written into the Constitution (...). Such payments should be the preferred method of correcting regional disparities. Furthermore, Québec is prepared to have written into the Constitution the principle of a commitment by all governments to reduce regional disparities.[251]

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248 Proposal by Québec concerning pay-TV, Federal-Provincial Conference of Ministers of Communications, Winnipeg, September 9-10, 1981, CICS, doc 830-103/012; see also Québec's position on pay-TV, Federal-Provincial Conference of Ministers of Communications, Calgary, May 21, 1982, CICS, doc 830-117/009.

249 Note of the Québec government on off-shore resources, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 6, p. 1.

250 Note of the Québec government on fisheries, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 7, pp. 2-3.

251 Note of the Québec government on equalization and regional disparities, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980,

229. Québec claims full jurisdiction over job creation programs and demands the recovery of funds allocated for this purpose by the federal government. Québec bases this claim on the fact that francophone workers have little out-of-province mobility because of significant social and cultural factors.[252]

230. Québec wants full responsibility over policy and decision-making in the area of adult training and asks the federal government for the transfer of all federal funds allocated to adult vocational training in Québec.[253]

231. Québec considers that unconditional transfers of funds for post-secondary education, tuition fees and student assistance are not negotiable because they relate to education and fall within the provinces' exclusive jurisdiction.[254]

232. The Québec government has never agreed nor has it the intention of agreeing to the implementation of a system of direct relations between the federal government and the municipalities. Such a system would in fact erode the province's already too-limited jurisdiction.[255]

233. Québec makes the following proposals concerning family law:

Dossier sur les discussions constitutionnelles, index 12, p. 3.

252 Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc 800-16/044-1, p. 4.

253 Ibid. See also the statement by René Lévesque, Annual First Ministers Conference, Charlottetown August 19-22, 1984, CICS, doc 800-26/007, p. 3. Concerning vocational training, see also a note of the Québec government on adult vocational training in Québec, First Ministers Conference on the Economy, Regina, February 14-15, 1985, CICS, doc 800-19/036, pp. 35-36.

254 Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc 800-16/044-1, p. 4.

255 Speaking notes for Jacques Léonard, Minister of Municipal Affairs, Interprovincial Conference of Ministers of Municipal Affairs, Victoria, August 9-12, 1983, CICS, doc 860-130/013, p. 2 (quotation); see also letter from René Lévesque to Pierre Elliott Trudeau, May 26, 1983, CICS, doc 860-130/014, p. 1.

a) marriage should be within exclusive provincial jurisdiction;

b) divorce would be an area of concurrent jurisdiction, though provincial legislation would have primacy over federal legislation. In addition, a province could exclude, by declaration of the legislature, the federal Parliament from the realm of divorce;

c) the provinces would have exclusive jurisdiction over ancillary divorce measures (alimony, maintenance, etc.) while the federal Parliament would have exclusive jurisdiction over standard rules concerning national recognition of divorce judgements issued both in Canada and in other countries;

d) in addition, the provinces would have the authority to appoint judges to a unified family court.[256]

234. The provinces should have the constitutional authority to appoint judges to superior, district and county courts.[257]

235. Québec proposes that each province have exclusive jurisdiction over natural resources (including regulation of interprovincial trade), with provincial legislation taking precedence over federal legislation in this area, so that the federal government could not invoke its general powers (residual and implicit power, declaratory, reserve and disallowance powers, emergency power, etc.) to override a provincial law. In addition, the provinces' public ownership should not be subject to expropriation by Parliament except with the consent of the provincial government concerned.[258]

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256 Note of the Québec government on family law, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 11, p. 2.

257 Note of the Québec government on the Supreme Court, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 10, p. 3.

258 Note of the Québec government on natural resources, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 5, pp. 3-4. The government reiterates the position taken at the First Ministers Conference of February 1979.

Individual and language rights

236. The vast area of rights and liberties is evolving rapidly. Constitutional entrenchment would inevitably complicate this process, make it infinitely more difficult and deny elected assemblies the power to act democratically in this area, transferring it to the courts for judgment.[259]

237. Québec is opposed to the inclusion in the Constitution of language rights that would limit its freedom to manoeuvre in a sector so vital to its future as a society. Québec cannot accept that its autonomy in this area be replaced by a limited authority subject to interpretation by the courts.[260]

238. Québec will include a notwithstanding clause in each statute passed by the National Assembly before April 17, 1982. A similar clause will henceforth be added as a matter of course to each bill submitted to the National Assembly.[261]

Institutions

239. Québec proposes that the following points be included in the Constitution concerning the Supreme Court:

a) institutionalize the Supreme Court;

b) confirm the current composition of the Court, i.e. nine judges, three of whom are from Québec;

c) specify that the federal government, before appointing a judge to the Court, must obtain the approval of the Minister of Justice of Québec or of the province concerned;

d) specify that the Supreme Court is the last resort tribunal in Canada, both for civil and criminal matters;

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259 Speaking note for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, Dossiers sur les discussions constitutionnelles, index 1, p. 5. See also paragraph 200.

260 Note of the Québec government on the Charter of Rights, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 3, p. 5 (quotation).

261 Declaration by Marc-André Bédard, Minister of Justice, Journal of Debates, May 5, 1982, p. 3291.

e) indicate that when the Court must decide on an issue of civil law in Québec, a bench will be formed on which the majority of the judges will be from Québec;

f) add that the provinces can refer a request for an opinion to the Court;

g) entrench the rule of linguistic alternation of the Chief Justice of the Supreme Court;

h) create a constitutional bench on the Court, half of whose members to be drawn from Québec and the other half from the other provinces. This bench would be responsible for deciding constitutional disputes submitted by the provinces or the federal government.[262]

240. According to Québec, a reformed Upper House should provide significant provincial representation and participation in the exercise of federal power. Québec also believes that the composition and operation of this House should reflect the dual nature of the Canadian nation.[263]

Intergovernmental policy

241. The National Assembly of Québec, reiterating the right of the Québec people to self-determination and exercising its historic right to act as an equal partner whose consent is required for any change in the Constitution of Canada that could affect Québec's

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262 Note of the Québec government on the Supreme Court, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 10, p. 2. In January 1979, the Lévesque Government asked for the creation of a constitutional court, the majority of whose judges would be appointed directly by the provinces, and demanded that jurisdiction over Québec civil law rest, in the final instance, with the Québec Court of Appeal. See Dossier sur les discussions constitutionnelles 1978-1979.

263 Note for an intervention by Québec on the Senate, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, Dossier sur les discussions constitutionnelles, index 9, p. 3.

rights and powers, declares it cannot accept the proposed patriation of the Constitution.[264]

242. As long as the people of Québec have not decided democratically to opt for a different regime, a government headed by the Parti québécois must act to protect and defend the interests of Québec within the federal system. The federal government will find Québec quite prepared to maintain harmonious relations with it.[265]

243. Québec is prepared, in spite of diverging constitutional interests, to agree to occasionally adopt common positions with the provinces concerning specific issues (education, municipal institutions, vocational training, economic development, federal spending power).[266]

244. Québec agrees to participate in aboriginal peoples conferences at the express request of representatives of aboriginal nations in Québec. This participation cannot be interpreted as recognition of the Constitution Act, 1982.[267]

245. Québec formulates its reply to aboriginal demands:

a) it recognizes that the aboriginal peoples of Québec are distinct nations and have a right to their culture, their language, their customs and traditions as well as the right to decide how to develop this separate identity;

b) it also recognizes that aboriginal nations, within the structure of the laws of Québec, have the right to own and control the lands attributed to them;

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264 Motion passed by the National Assembly, Journal of Debates, Third Session of the 32nd Legislature, December 1, 1981, p. 605 (quotation).

265 Inaugural message of René Lévesque, Fifth Session of the 32nd Legislature, Journal of Debates, October 16, 1984, p. 22.

266 Statement by the Prime Minister on the current situation and priorities for the future, Annual First Ministers Conference, Charlottetown, August 19-22, 1984, CICS, doc 850-26/007, p. 6.

267 Opening speech by René Lévesque, Conferences of First Ministers on Constitutional Issues of Interest to Native People, Ottawa, March 15-16, 1983, CICS, doc 800-17/033, p. 1, March 8-9, 1984, CICS, doc 800-18/021, p. 1 and April 2-3, 1985, CICS, doc 800-20/014, p. 1.

c) these rights must be exercised within the context of Québec society, and consequently they cannot include sovereignty rights that could jeopardize the territorial integrity of Québec;

(...)

j) from Québec's point of view, protection of the existing aboriginal rights also extends to the rights included in agreements reached with Québec as part of the land claims process. In addition, the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement must be viewed as treaties and have full effect;

k) Québec is ready to explicitly recognize in its legislation the existing rights stemming from the Royal Proclamation of 1763 concerning aboriginal nations.[268]

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[268] Cabinet decision, February 9, 1983, included in Les fondements de la politique du gouvernement du Québec en matière autochtone, Secrétariat aux affaires autochtones, gouvernement du Québec, 1988, pp. 3 and 4.

Governments of René Lévesque and Pierre Marc Johnson, May to December 2, 1985[269]

Québec's status within Canada

246. The federal framework of the current Constitution should be improved to ensure that Quebecers obtain the most favourable conditions possible for their development.

247. The Québec people have the inalienable right to democratically determine their constitutional future as they see fit.

248. Recognition of the existence of the Québec people as such is the essential prerequisite to Québec's agreement to and participation in a new constitutional process.

Amending formula

249. It should be recognized that Québec has a veto over both the reform of federal institutions and the creation of new provinces.

250. Regarding changes to the distribution of powers, Québec should have a veto or constitutional right to opt out with reasonable and mandatory financial compensation.

Distribution of powers

a) General principles

251. Québec is prepared to reach a constitutional agreement with the rest of Canada, designed to repair the injuries done to Québec in 1981, provided a) Québec's primary jurisdiction in terms of rights and freedoms is acknowledged; b) the amending formula is changed to provide Québec with sufficient guarantees; c) that the distribution of powers is rearranged and judicial institutions are reformed.

b) Sectorial jurisdiction

252. The distribution of constitutional powers should be revised so as to:

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269 **Unless indicated otherwise, the following positions are taken from the document Projet d'accord constitutionnel, policy statement, proposals of the Gouvernement du Québec, May 1985.**

a) confirm Québec's full control over the manpower and all associated areas;[270]

b) recognize Québec's primary authority for the general direction of its economic development;

c) acknowledge Québec's primacy of jurisdiction in the area of immigrant selection and settlement in Québec;

d) grant Québec a significant increase in its powers in communications;

e) recognize Québec's exclusive jurisdiction over marriage and divorce;

f) recognize, in terms of international relations, Québec's unique situation whenever its jurisdiction and identity are at issue, particularly as part of the Francophonie.[271]

253. Québec should have the power to appoint, following consultation with the federal government, judges to Québec Superior Courts.

c) Unilateral powers

254. The federal spending power should be constrained so that payment of conditional grants to the provinces is subject to the agreement of a majority of them. Any province refusing such grants should receive fair compensation.

255. The reserve and disallowance powers should be abolished.

Individual and language rights

256. The Canadian Constitution must recognize Québec's exclusive right to decide its official language and to legislate on any language issue within its jurisdiction.

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270 See also the note of the Québec government on job creation and vocational training, Provincial First Ministers Conference, St. John's, Newfoundland, August 21 and 22, 1985, CICS, doc 850-31/019, pp. 68-69.

271 Position reiterated in Le Québec dans le monde, Le défi de l'interdépendance, Énoncé de politique de relations internationales, Gouvernement du Québec, Ministère des Relations internationales, June 1985, p. 8.

257. Québec would guarantee the right of the anglophone minority to retain its cultural and educational institutions, and receive health care and social services in its language.[272]

258. Québec is prepared to amend the Charter of the French Language to guarantee that children of parents who received their elementary education in English in Canada will have access to English schools; in return, it expects that children eligible for French education everywhere in Canada will be able to effectively exercise the guarantee accorded by section 23.[273]

259. Only sections 3 to 5 of the Canadian Charter should continue to apply in Québec.

260. Québec's legislation should have the authority to subject its legislation solely to the Québec Charter of Rights and Freedoms, so that it could include the Charter in the Constitution of Québec.[274]

Institutions

261. The Constitution should explicitly recognize that three of the nine judges of the Supreme Court of Canada are to be appointed from Québec and that the position of Chief Justice is to be filled according to the principle of linguistic alternation.

262. Québec should have the constitutional right to participate in the appointment of Supreme Court of Canada judges from Québec. Its agreement should be obtained before their appointment by the federal government.

263. Only judges who are from Québec and trained in civil law should decide matters of civil law.

Intergovernmental policy

264. To support the development of francophone minorities, Québec is prepared to negotiate mutual assistance agreements with the government of any other province.

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272 **See also speech by Pierre Marc Johnson, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, Ottawa, May 25, 1985.**

273 **Ibid.**

274 **See also speech by Pierre Marc Johnson, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, Montréal, May 29, 1985.**

265. Payments of federal grants to individuals and institutions working in the areas of culture and education should be subject to Québec's prior approval.

266. The Québec government's support for holding negotiations on free trade comes with a certain number of conditions: 1) Québec wants to participate in the entire negotiation process (determination of objectives and mandates) and in the negotiation itself through the presence of representatives from Québec on the negotiation team; 2) transition, reassignment and job protection measures must be developed jointly by the federal government and the provinces to facilitate the adaptation of workers, businesses and regions to the changes resulting from a change in the trade system (...); 3) in accordance with the Constitution of 1867, Québec will only consider itself bound, in areas within its jurisdiction, if it has given its consent.[275]

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[275] Speech by Pierre Marc Johnson, First Ministers Conference on the Economy, Halifax, November 28-29, 1985, CICS, doc 800-21/031, p. 6 (quotation).

Second government of Robert Bourassa (December 12, 1985 - June 23, 1990)

Québec's status within Canada

267. Québec's future lies within Canada. That is the profound conviction of the vast majority of Quebecers and the first and fundamental commitment of this government. The Québec government believes in federalism because, within the federal system, Québec can not only be faithful to its history and special identity but enjoy favourable conditions for its full economic, social and cultural development.[276]

268. Recognition of Québec's specificity is a prerequisite to any negotiation designed to achieve Québec's endorsement of the Constitution Act, 1982. Such recognition must guarantee Québec the means needed to attain its full potential within the Canadian federal framework.[277]

269. Given its special situation within Canada and North America, Québec has sought, by means of the five conditions for its endorsement of the Constitution Act, 1982, to obtain assurance that the Canadian Constitution will enable it to attain its full potential within the Federation and receive the guarantees and powers necessary to protect and develop the characteristics that contribute to its specificity. Recognition of Québec's specificity was therefore a prerequisite to any negotiation intended to achieve Québec's endorsement of the Constitution Act, 1982. The efforts to find satisfactory constitutional answers to the other conditions laid down by Québec were based essentially on this special identity that sets Québec apart, particularly at the cultural, linguistic, social, economic, legal and political levels. Recognition of the distinct character of Québec society therefore became the generating principle of the other conditions, their common raison d'être.[278]

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276 **Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs at the symposium Une collaboration renouvelée du Québec et des ses partenaires dans la Confédération, Mont-Gabriel, May 9, 1986, p. 8.**

277 **Ibid., (quotation) p. 15.**

278 **Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien, at a symposium organized by the Canadian Bar Association on the 1987 Constitutional Accord, in L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques. Les éditions Thémis, 1987, p. 180.**

270. English Canada must understand very clearly that, regardless of what is said and regardless of what is done, Québec is, now and forever, a distinct society, free and able to pursue its destiny and its development.[279]

Amending formula

271. The constitutional amending formula included in the Constitution Act, 1982 is fundamentally unacceptable to Québec in that it fails to make provision for financial compensation in every case of opting out, and it allows changes to federal institutions and the creation of a new province despite Québec's objection.[280]

272. Québec objects to the fact that the 1981 patriation was used as a pretext to substantially amend the Canadian constitution, despite Québec's objections and in disregard of its historic rights.[281]

Distribution of powers

a) General principles

273. No government of Québec of whatever political leaning could sign the Constitution Act, 1982 as it is currently worded. However, if certain changes were made, it could be acceptable to Québec. These changes are: 1) explicit recognition of Québec as a distinct society; 2) guarantee of greater powers over immigration; 3) limitation of the federal spending power; 4) recognition of a veto power; and 5) Québec's participation in appointing judges to the Supreme Court of Canada.[282]

274. The 1987 Constitutional Accord, a corrective agreement insofar as it enabled Québec to resume its place as a major and distinct partner in the federation, ends Québec's constitutional isolation. It completes the patriation process initiated in 1981-82 and restores the very foundations of federalism by ensuring that the go-

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279 **Preliminary remarks by Robert Bourassa, in the National Assembly of Québec, Friday, June 22, 1990.**

280 **Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel symposium, May 9, 1986, pp. 11-12.**

281 **Ibid., p. 4.**

282 **Ibid., pp. 4-5 and p. 12.**

vernmental partners give their full and willing accord to the basic constitutional document by which they are governed.[283]

275. In substance, the 1987 Constitutional Amendment includes the following elements:[284]

1) It stipulates that any interpretation of the Constitut on must be consistent with the recognition of these two points: that Québec forms a distinct society within Canada and that the legislature and government of Québec are mandated to protect and promote this distinct character; that linguistic duality is a basic characteristic of Canada, a characteristic for whose protection Parliament and the legislatures are responsible.

2) It stipulates a procedure, that can be written into the Constitution, for negotiating accords relating to immigration, which, subject to Parliament's power to set national standards and objectives concerning the setting of general immigrant categories, in particular, immigration levels and the choice of categories of ineligible persons, allow a province to exercise new powers in this area.

3) It gives every province the right to opt out, with fair financial compensation, of any new shared-cost program established in a sector of exclusive provincial jurisdiction, provided the province institutes a program or measure compatible with national objectives.

4) It places under the principle of provincial unanimity certain constitutional amendments that, under the Constitution Act, 1982, required only the application of the general amending formula. These amendments affect proportional representation of the provinces in the federal Parliament, the powers of the Senate and the selection of Senators, appointments to the Supreme Court, the creation of new provinces and the extension of existing provinces. In addition, the 1987 Constitutional Amendment guarantees the provinces the right to withdraw, with fair financial compensation, from any constitutional amendment

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283 **Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien, in L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques, Les éditions Thémis, 1987, p. 190.**

284 **Resolution of the National Assembly of Québec, June 23, 1987.**

that transfers provincial legislative powers to Parliament.

5) It stipulates, among other things, that three of the nine Supreme Court judges must be from Québec and that the Governor General in Council appoint only candidates proposed by the Québec government. Furthermore, the same procedure would apply to appointments to fill Senate vacancies.

276. The issues Québec would like to see resolved during the second round of constitutional discussions will obviously reflect our traditional demands and, in conjunction with the gains realized in 1987, will seek to widen the scope of Québec's role in the Canadian Federation.[285]

b) Sectorial jurisdiction

277. Québec's cultural security must be guaranteed. Specifically, Québec must control every aspect of its immigration to maintain its francophone character, by using its power to balance or even reverse the trends pointing to a decline in its relative demographic weight in Canada.[286]

278. We must always bear in mind that agriculture is an area of shared jurisdiction between the federal government and the provinces (...). The role of the federal government is of particular importance in issues of interprovincial and international trade (...). On the other hand, of course, the provinces can exercise their right to intervene in the areas of financing, marketing, research, production assistance, and income stabilization. We would not agree to any measure that would jeopardize these fundamental rights.[287]

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285 Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien, in L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques. Les éditions Thémis, 1987, p. 206.

286 Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel symposium, May 9, 1986, p. 10.

287 Draft speech by Michel Pagé, Minister of Agriculture, Fisheries and Food, Federal-Provincial Conference of Ministers and Deputy Ministers of Agriculture, Victoria, August 26-27, 1986, CICS, doc 830-224/024, p. 2 (quotation).

279. The Québec government intends to vigorously defend its powers and jurisdiction in the financial sector, while being aware of the need to harmonize its legislation with that of the federal government and the other provinces.[288]

c) Unilateral powers

280. The fact that the federal government can and intends to spend money in every area, whether or not they lie within its jurisdiction, has become intolerable. It is a sword of Damocles hanging over each province's policies regarding its social, cultural and economic development. It appears increasingly necessary that this spending power be made subject to provincial approval. Such a change would contribute significantly to improving the way the federal system operates.[289]

Individual and language rights

281. Québec intends to control language policy within its borders. Québec views the maintenance of its language, culture and institutions as essential to its survival as a distinct society. Therefore, the Québec government must be chiefly responsible for language policy within Québec and, in this area above all, Québec will attempt to secure the broadest possible authority. It will not be willing to sacrifice its jurisdiction over language to an ideal of Canadian unity that does not incorporate very strong guarantees concerning the preservation of its distinct character.[290]

282. In certain highly controversial issues where it is difficult to identify clear and generally recognized principles, it was prudent to leave the last word to Parliament. Because of the delicate balance that must be preserved in such matters, Québec favours

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288 Minister responsible for Finance and Privatization, La réforme des institutions financières au Québec: objectifs, principes directeurs et plan d'action, Québec City, October 1987.

289 Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel symposium, May 9, 1986, p. 10.

290 Speech by Claude Ryan, Minister of Education, Higher Education and Science and Minister responsible for the Administration of the Charter of the French Language, Kingston, December 8, 1989, pp. 1-2 (quotation).

maintaining the notwithstanding clause included in section 33 of the Canadian Charter of Rights and Freedoms.[291]

Institutions

283. The status of the Supreme Court as final arbiter in constitutional debates, should be entrenched in the Constitution. Further, its composition must reflect the Canadian duality in terms of legal systems, and contribute to both preserving Québec's distinct character and recognizing its unique contribution to Confederation. The Court's composition is of great concern to Québec. Constitutional guarantees ensuring adequate representation on the Court and significant participation in the selection process applied to judges from Québec are essential.[292]

Intergovernmental policy

284. Québec offers six proposals to help strengthen the Canadian federation: 1) on-going discussions to establish the conditions for Québec's endorsement of a new constitutional accord; 2) a substantial increase in regional economic development efforts; 3) the federal government's continued fulfilment of its constitutional commitment by means of equalization rather than by the implementation of new programs and the re-opening of fiscal arrangements as part of fiscal reform; 4) fair treatment of provinces receiving equalization by making appropriate corrections to the federal proposals in the near future; 5) provincial participation in tax reform, and ensuring the provincial presence in the consumption tax field does not decline; 6) and finally, inclusion in the priorities of each government of the means needed to enable women to achieve full economic equality.[293]

285. The Québec government is of the view that the fiscal arrangements between the federal government and the provinces should be covered by a formal agreement between the two orders of government, which would endow them with a more permanent, stable and less ar-

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291 Ibid., p. 8 (quotation).

292 Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien, in L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques. Les éditions Thémis, 1987, p. 201.

293 Opening declaration by Robert Bourassa, Annual First Ministers Conference, Vancouver, November 20-21, 1986, CICS, doc 800-22/047, pp. 8-9.

bitrary character than the current arrangements. It also demands that the federal government respect its financial commitments since, in the past, it made the decision to make transfer payments to the provinces rather than allow them sufficient tax room to assume their constitutional responsibilities in the areas of health and post-secondary education. Sufficient resources must be allocated to the provinces to enable them to uphold the principles of providing universal, accessible and free services. However, if the federal government is no longer capable of meeting its financial responsibilities in regard to health and post-secondary education, it should withdraw from these sectors and provide the provinces with compensation in the form of additional tax points.[294]

286. Québec protests against the federal government's unilateral changes to transfer mechanisms without prior negotiations with the provinces. The Québec government has no objection in principle to some degree of federal withdrawal, but it cannot agree that that should occur without negotiating with the provinces and fiscal compensation. In addition, it is paradoxical that the federal government should withdraw from various sectors while at the same time imposing national standards and applying financial penalties in cases where the provinces do not comply with these standards.[295]

287. The Québec government's position concerning the aboriginal peoples is the following: 1) Québec favours constitutional recognition of the principle of aboriginal self-government within the framework of agreements negotiated with governments; 2) Québec is prepared to negotiate agreements and to make a commitment to that end; 3) Québec wants to be a party to all negotiations on self-government concerning the aborignal peoples living in Québec, and the resulting agreements must be approved by the National Assembly; 4) finally, Québec accepts that the agreements thus approved should receive constitutional protection.[296]

288. Québec is resolved to support francophone minorities. However, its initiatives must take into account two principles inherent in the nature of the Canadian federal system:

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294 Gérard D. Levesque, Minister of Finance, 1986-1987 Budget Speech, Appendix F, pp. 18-19, p. 21.

295 Ibid., p. 14.

296 Opening speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, First Ministers Conference on Constitutional Issues of Interest to Native People, Ottawa, March 26-27, 1987, CICS, doc 800-23/017, pp. 4-5 (quotation).

a) it is up to each province, in the areas of jurisdiction assigned to it under the Constitution, to carry out its responsibilities toward its linguistic minority;

b) the federal government, instead of carrying out the duties assigned to the provinces by the Constitution, should concentrate on supporting provincial efforts to ensure effective recognition of the rights of the linguistic minority.[297]

289. The Québec government will work with francophones outside Québec as follows: Québec will contribute to strengthening francophone communities while respecting their priorities, their needs and their autonomy, in concert with its federal and provincial partners.[298]

290. Québec set conditions on its support for negotiations leading to the Free Trade Agreement between Canada and the United States: 1) Québec demanded that the existing distribution of legislative and constitutional powers be maintained. Among other things, the normal constitutional rules for the implementation of international treaties had to apply. 2) Québec also demanded that all the laws, programs and policies which, in the social area as well as communications, language and culture, contribute to Québec's specificity, be maintained. 3) Québec also wanted to preserve the room to manoeuvre it needs to develop and modernize its economy, with particular emphasis on small and medium-sized business. 4) Québec asked for assistance programs for workers and businesses in vulnerable sectors during the transition period. 5) Québec requested that the federal government and the provinces continue to cooperate in the management and implementation of the Accord as a whole. In this vein, it wants a standing federal-provincial consultation committee to be formed. Québec indicated it was prepared to change certain of its laws to implement the Accord in the areas within its jurisdiction.[299]

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297 **Speech by Claude Ryan, Minister of Education, Higher Education and Science and Minister responsible for the Administration of the Charter of the French Language, Kingston, December 8, 1989, pp. 11-12.**

298 **Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, at the opening of the office of the Fédération des francophones hors-Québec, March 1988, (quotation).**

299 **L'Accord de libre-échange entre le Canada et les États-Unis : analyse dans une perspective québécoise, ministère du Commerce extérieur et du Développement technologique, Québec, 2nd quarter, 1988, pp. 39-42.**

291. While in general, Québec supports the objectives of multilateral trade negotiations, its participation in developing Canadian negotiating positions reflects its concern to defend the laws, programs and policies that, particularly in the social, cultural and communications areas, contribute to the specificity of Québec society. The government is also anxious to preserve the manoeuvring room that will enable it to strengthen Québec's economic fabric and technological base.[300]

292. If anything can be concluded from the most recent constitutional negotiations, it is that the existing process of constitutional revision in Canada is discredited. The Québec government will not return to the negotiating table on constitutional issues.[301]

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300 Les négotiations commerciales multilatérales de l'Uruguay Round, perspective québécoise, ministère des Affaires internationales, Québec City, March 1990, p. 7.

301 Message to the people of Québec by Prime Minister Robert Bourassa, June 23, 1990.

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